THE LAW

RELATING TO THE

TAXATION OF FOREIGN INCOME.

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WITH PREFACE

BY

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TO

THE RIGHT HONOURABLE

SIR ROBERT BANNATYNE FINLAY,

G.C.M.G., K.C., M.P., LL.D.,

HIS MAJESTY'S ATTORNEY-GENERAL,

This Book

IS

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NOTE.

THE writer's aim in this little work has been to collect the provisions of law specially relating to the Taxation of Foreign Income, both for the benefit of the practising lawyer whose work leads him but rarely into the domain of Revenue Law, and of the business man whose investments and interests lie partly abroad. For the sake of the latter, the practice of foreign countries has been analysed in the Introduction, and the law has been cast into the form of rules to simplify and facilitate reference. It is hoped that by this means a business man may be enabled to estimate without too great difficulty the extent to which his foreign profits will be brought into charge, both in the United Kingdom and in their country of origin. It need scarcely be added that, as in all unauthorised digests, the rules can only be considered as law in so far as they are logical inductions from the various statutes and decided cases.

I have not thought it necessary to print the chief Taxing Acts as an Appendix, since the book deals with only a small section of the area which they govern. For

these the reader is referred to Mr. Stephen Dowell's admirable work, to which, in common with all writers on Revenue Law, I owe a debt of gratitude.

My thanks are due to the many friends who have helped me with information and advice. I am especially indebted to Mr. Haldane for his Preface, and to the Department of Inland Revenue, who readily afforded me assistance whenever I sought it.

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PREFACE.

AMONG the difficult topics in the Law, the learning relating to Foreign Income Tax holds a high place. Whether the point be what the foreigner has to pay on British investments, or whether it be what the resident here has to pay on foreign investments, the problem is generally intricate. I have felt for long that the time was ripe for a systematic statement of the nature of these problems, and of the stage to which the tribunals have got in solving them. In the pages which follow, Mr. Buchan has made a scientific investigation of the subject in a systematic form. For the conclusions he has reached he alone is responsible. But whether or not he has succeeded in successfully recording and anticipating the deliverances of the Courts, he has, at least, rendered to the legal profession, and not less to the business world, a great service. He has produced a book for which I, for one, have long been waiting. Nothing like it exists, and those who have to be constantly endeavouring to solve this class of very difficult legal question will, I think, have cause to feel grateful for the scholarly and comprehensive treatise which Mr. Buchan

has produced. The time had come when it was necessary to extract and define the real principles of the decisions of the House of Lords in such cases as *Colquhoun* v. *Brooks* and that of the *Gresham Society*, and to estimate their bearing on the conflicting and at times contradictory judgments of lower tribunals. Because I am grateful to the author, not only for much general information, but for the help which his book gives me in finding the way through an obscure region, I have ventured to write these few words of preface.

R. B. HALDANE.

LINCOLN'S INN.

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A. C. .....Law Reports, Appeal Cases (1875—1890). In and since 1891 these Reports are cited by the year, *e.g.*, (1899) A. C.

B. & C. .....Barnewall and Cresswell (1822—1830).

C. B. .....Common Bench Reports (1845—1856).

Ch. D.....Law Reports, Chancery Division (1875—1890). In and since 1891 these Reports are cited by the year and volume, *e.g.*, (1891) 1 Ch. D.

Dowl. .....Dowling, Practice Cases (1830—1841).

E. & B. .....Ellis and Blackburn (1852—1858).

Exch. .....Exchequer Reports (1847—1856).

Exch. D. .....Law Reports, Exchequer Division (1875—1880).

Gray .....Gray's Massachusetts Reports.

H. & C. .....Hurlstone and Coltman (1862—1866).

H. & N. .....Hurlstone and Norman (1856—1862).

H. L. C. .....House of Lords Cases (1847—1866).

Ir. Rep. C. L. .....Irish Reports, Common Law (1867—1877).

K. B. .....Law Reports, King's Bench Division (since 1901).

Kay.....Kay (1853—1854).

L. J. C. P. .....Law Journal (New Series), Common Pleas (1831—1880).

L. J. Ch. .....Law Journal (New Series), Chancery (since 1831).

L. J. Exch. .....Law Journal (New Series), Exchequer (1831—1880).

L. J. Q. B.....Law Journal (New Series), Queen's Bench (since 1831).

L. R. E. & I. App. ...Law Reports, House of Lords, English and Irish Appeals (1866—1875).

L. R. Exch. .....Law Reports, Exchequer (1865—1875).

L. R. Sc. & D. A.....Law Reports, Scottish and Divorce Appeals (1866—1875).

L. T. .....Law Times Reports (1843—1859).

L. T. (N. S.) .....Law Times Reports (New Series) (since 1859).
Mass. .....Massachusetts Reports.
N. Y. .....New York Reports.
O'M. & H. .....O'Malley and Hardcastle (since 1869).
Peters .....Peters' United States Supreme Court Reports.
Plowd. Com. .....Plowden's Commentaries (1550—1580).
Price .....Price (1814—1824).
Q. B. .....Queen's Bench Reports (1841—1852).
Q. B. D. .....Law Reports, Queen's Bench Division (1875—1890). In and since 1891 these Reports are cited by the year and volume, *e.g.*, (1900) 2 Q. B.
Sc. L. R. .....Scottish Law Reports (since 1865).
Sc. L. T. R. .....Scottish Law Times Reports.
T. L. R. .....Times Law Reports (since 1884).
Tax Cases .....Reports of Tax Cases. Published for departmental use by the Commissioners of Inland Revenue since 1875.
U. S. .....United States Supreme Court Reports.
W. N. .....Weekly Notes (since 1866).
W. R. .....Weekly Reporter (since 1852).

INTRODUCTION.

INTRODUCTION.

THE purpose of this book is to outline the principles of law which govern in this country the taxation of foreign income, that is, the profits derived by British residents from a foreign source and the profits which accrue from British sources to residents abroad. The phrase "foreign income," used to cover both classes of profit, seems to have been first introduced by Lord Herschell (1), and it is a convenient expression for a branch of revenue which is growing in fiscal significance and in legal complexity. As such it is contrasted on the one side with British income accruing to British residents, and on the other with foreign capital which is liable, under certain conditions, to estate duty and other charges. The direct taxation of all foreign wealth (2) may be regarded, economically, as one subject, and it is possible, with some authorities, to consider the death duties as a branch of income tax, under which property by inheritance is treated as income and taxed at its source. It is also true that the economic significance of international taxation and the difficulty of framing intelligible principles of law appear in this connection in their most typical form, as was shown in the discussions raised by the Finance Act of 1894 on the levying of estate duty on property simultaneously

(1) 2 Tax Cases, at p. 499.

(2) The taxation of foreign wealth might be divided as follows: (1) *Indirect, e.g.*, all duties and tariffs on commodities exported and imported, bounties, &c. (2) *Direct*, (a) on capital, *e.g.*, the death duties and stamp duties on foreign scrip; (b) on income.

taxed in Australia. But in the details of assessment foreign income and foreign capital are worlds apart, and it seemed wiser to confine what is, in any case, a complicated subject, to limits which are generally recognised.

The taxation of foreign income is as old as the Income Tax Acts, but, unlike many of the provisions of these Acts, it has not any long descent from earlier assessments. Under the Tudor Subsidy Acts (1), it is true, we find the alien resident charged double the amount for "persons born under the king's obeysaunce," but such a levy has no intelligible relation to our modern system. The question arose when the kind of income arose—roughly speaking, during the seventeenth and eighteenth centuries, when English commerce acquired wide foreign ramifications, and, at the same time, had reached the maturity which made taxation politic and possible (2). The first trace of direct taxation is to be found in Pitt's Income Tax Act of 1799, and the principle there established has been substantially repeated in every subsequent Act. But if the system is comparatively recent it has grown with remarkable rapidity, and it is probable that its progress has been faster than any other branch of the revenue code. Pitt, in 1798, estimated the national income liable to his new

(1) A poll tax on aliens was levied in 1449, and the yield of it was granted to Henry VI. for life in 1452. Its provisions are curious: "(1) On all *merchant strangers*, if not householders, 40*s.*; on those not householders, but resident in the country for six weeks or more, 20*s.*; on householders by letters patent, 10 marks. (2) *On strangers not merchants*, if householders, 1*s.* 4*d.*; if not householders, 6*d.*" Dowell, History of Taxation, 2nd ed. I. pp. 126 *et seq.*

(2) Another reason is that, before Pitt, such levies as were made on income were concerned only with income from lands and offices, matters which did not affect the foreigner or the British investor abroad. There is, however, one curious attempt to tax foreign income in the famous Absentee Tax, passed by the Irish Parliament in 1773, but disallowed by the Crown in spite of the advocacy of Chatham. It proposed a tax of 2*s.* in the £ on the net annual profit of all Irish landowners who did not reside in Ireland for six months in each year.

taxes at 102,000,000*l.*; the gross amount assessed to the tax in 1900-1 was 833,000,000*l.* In 1842 a 1*d.* per £ was worth to the yield 772,000*l.*; in 1903 it was worth 2,563,000*l.* It is, unfortunately, impossible to get comparative figures of foreign income by itself, but there is no doubt that it is of the highest importance to the general receipts. The large amount of surplus capital which we have had in our hands at various times during the past century has led to the creation of British interests in every country and every industry in the world; and the position of London as the chief financial and commercial centre, and the high purchasing power of our people, have induced foreign firms to establish agencies and depôts, and in some cases to settle their head offices on our shores. Figures are hard to get at, for a firm, resident in Britain and trading partly abroad, does not always differentiate in its returns between the localities where its profits are earned. But we find that out of a total of 45,000,000*l.*, assessed under Schedule C. for the year 1903-4, 29,000,000*l.* represented investments in Indian, foreign, and colonial government stock. Income derived from investments abroad (other than government securities) and from foreign and colonial railways came to 37,000,000*l.* We have thus a total of 66,000,000*l.*, an increase, it may be noted, of 100 per cent. in the last twenty years (1). These figures represent foreign income only under one schedule and the sub-class of another, but they reach about a twelfth of the total income on which the tax was paid.

(1) 48th Report of Commissioners of Inland Revenue, 1905, giving the latest available income tax figures, those for 1903-4.

I.

THE STRUCTURE OF THE SYSTEM.

Though income tax law contains many provisions which are inapplicable to foreign income, the pivot of the whole system, the five schedules, is also the pivot of the part. It is needless to enlarge upon the other features common to both, but some reference must be made to the schedules, since, without a clear understanding of them, any subsequent criticism on the structure of the system will be unintelligible. Schedule A. deals with the assessment upon the ownership of land and houses. The tax is, in general, payable in the first instance by the occupier, but it is ultimately paid by the landowner, and property is assessed in the locality where it is situated. Schedule B. contains the assessment upon the occupation of land; roughly speaking, it is the farmers' tax. Schedule C. deals with income from investments in public funds, British, colonial, or foreign, and the tax is paid by way of deduction before the income reaches the taxpayer. Schedule D. contains the tax on the profits of trades and professions. It embraces (a) profits accruing to a British resident from any trade or profession carried on in Britain or elsewhere, or from any possessions situated in Britain or elsewhere; (b) profits accruing to a foreign resident from a profession or trade exercised, or possessions situated, in Britain; and (c) the interest of money, annuities and other annual profits not charged by virtue of any other schedule. To ascertain the duties, the rules of the schedule provide six cases. Case I. deals with trades or concerns in the nature of trade. Case II. deals with professions, employments and vocations. In both of these cases the assessable profits are calculated upon a three years' average. Case III. deals with profits of an uncertain annual value not charged under Schedule A., and the tax is levied

on the full annual amount of such profits. Case IV. contains the interest from foreign securities, the tax being computed on the full annual amount of the sums received in Britain. Case V. deals with the profits of foreign possessions, the word being interpreted in its widest sense, and such profits are calculated on the three years' average. Case VI. is the sweeping-up case, containing all profits not falling under any of the other rules, and not charged in virtue of any other schedule. The final schedule, Schedule E., is concerned with the profits of public offices, including not only official salaries but the wages of those in the employ of public companies. The tax is paid by way of deduction from a salary or wage before it is handed to the taxpayer.

In considering the structure of the system under which foreign income is taxed, it is important to keep strictly to our special subject, and avoid the many tempting questions which properly belong to the consideration of the income tax as a whole. Undoubtedly both the economic and the methodological importance of the branch are mainly dependent upon the larger tax, but in subject-matter and mode of assessment there is sufficient peculiarity to warrant us treating foreign income as a substantive system. As has been often pointed out, the income tax is not so much a tax as a complete revenue code [1], and the branch which concerns foreign income may be treated logically as a sub-code, structurally complete, though depending for its ultimate significance on its position in the wider system. The questions, therefore, which we have to ask, are not questions which would be applicable to a sporadic tax such as the Inhabited House Duty, but only to a code based upon intelligible principles, and in a real sense complete in itself. It is the aim of this book to show that the taxation of foreign income in England, so far from being an arbitrary

[1] Gladstone, Financial Statements, p. 20.

proceeding based upon some casual provisions and implications in an old taxing Act and expounded in a number of judicial decisions where the Courts groped in the dark after the meaning of evasive words, is in reality a serious code, economically sound, and formally justifiable.

The first requirement of a revenue system is that it be comparatively simple and intelligible; really simple it can never be, for the subject is complex and simplicity could only be purchased at the cost of adequacy. The second requirement is that it be economically sound, and the two requirements are more closely linked than is at first sight apparent. For if a revenue law is so complex as to lead to wide instabilities of interpretation, income will be subject to a captious and variable charge, and, since no man knows what he may have to pay, proper measures of insurance and provision will be impossible. Indeed, it might fairly be argued that an economically sound system which was difficult to interpret would work more real ill than a fallacious law which was clear in itself and consistently administered. The third requirement is that it be certain. It is a popular maxim that an old tax is no tax. "Frequent changes in the tax system have a disturbing effect. The economic arrangements of society are adjusted to the actual state of things, and reasonable expectations are formed which are disappointed by sudden and unforeseen changes. Hence the strong objection that business men feel to even beneficial changes" (1). Security is so valuable in commerce that it may often be bought, cheaply enough, at the price of a little unfairness. Economic soundness, certainty and clearness are the three great desiderata; not simplicity, in the ordinary sense of the word, for that would probably mean the absence of the other qualities. Simplicity in an un-simple subject is the surest road to confusion. But if

(1) Bastable's Public Finance, 3rd ed. p. 419.

complexity must be faced, it is essential that the complex law should be consistent, clearly based on substantial principles and not variable at the caprice of the Courts. The Courts, indeed, are concerned with only one aspect of revenue law—its coherence and intelligibility, and, as a rule, they have steadily refused to admit ulterior political considerations in their interpretation, however strong the temptation to use such aids to decision (1). They have been content to wrestle honestly with verbal minutiæ, even in cases where this mode of treatment, as Lord Esher once plaintively observed, was "enough to puzzle their heads off."

Considered in relation to its structure, a revenue system must fall under one or other of two classes. It may be a stereotyped system with self-acting rules, such as the French *Patente* or *Impôt sur les valeurs mobilières*, or it may be an elastic system depending in the last resort upon several questions of fact which are left to the discretion of the Court. The first type can be exhausted by a certain number of categorical propositions. If a question of fact is involved, such, for example, as the residence of a corporation, there is a quantity of rules to determine the point automatically. Residence in England would, under this principle, consist of the possession of a certain number of the *pièces justificatives* of a company—a certain proportion of the shares held in England, a certain number of the directors domiciled in England, English registration, English offices. The French *Impôt sur les valeurs mobilières*, to take a practical instance, depends upon the performance of certain formal acts which are held to constitute a use of the French markets. The other type, while it always tends to frame specific rules for its guidance, can never be exhausted by rules, since in several directions it leaves an *impasse* in the shape of a question of fact, on which it is impossible to dogmatise with

(1) Cf. the words of Lord Herschell in *Grainger* v. *Gough*, 3 Tax Cases, at p. 468.

any assurance. It is *real* taxation, in another than the legal sense, since it endeavours to tax an activity which is really, as well as formally, of a particular kind. The taxation which is the subject of this volume is, perhaps, the best known instance of such a type. The great undefinable questions of fact are the "residence" of an individual, the "residence" of a corporation, the "carrying on business" in England of a foreign firm by means of an agency, and the "carrying on business" abroad of an English firm by means of a foreign company (1). Decided cases give us certain precedents, but they can cover only a small part of the vast area of possible combinations. For the rest the matter is at the discretion of individual judges (2).

Each type has its own value. The first gives us, at any rate, clear and consistent law. It has also the merit of certainty, for with it there are no sudden reversals of practice, like the case of *Colquhoun* v. *Brooks* (3), to throw the whole system out of gear. There are few of the subtleties, too, which complicate the interpretation of our own revenue law. Above all, the ordinary citizen can know definitely where he stands; he can count on this business being exempt from, and that liable to, assessment. And not only is he spared the cost and trouble of fighting doubtful cases, but he is able to estimate and make provision for his debts to the Crown. As against this, we may set the fact that all arbitrary rules make the law easy to evade, and work hardship in the long run to revenue and private citizen alike. The history of the attempts of the separate American States at anti-Trust legislation shows how easy it is to

(1) See pp. 32—34, 39—45, 75—77, *infra*.

(2) An attempt has been made by the Courts to reduce the third question, the "carrying on business" in England of a foreign firm by means of an agency, to an exhaustive series of rules; but the results have scarcely been satisfactory. See p. 76, *infra*.

(3) See p. 34, *infra*.

defeat the spirit of a law by compliance with artificial conditions. To take our former instance, the "residence" of a corporation, it is practically impossible to devise a set of *pièces justificatives* which shall invariably cover the real facts of the case (1). The second type seems, therefore, to follow the better method, for it leaves the matter indeterminate and requires the Courts to decide, not whether the facts before them can be fitted under certain prescribed rules, but whether they constitute in the ordinary acceptation of the term, vital acts of management (2). What is vital in one business may be immaterial in another, and no catalogue could exhaust the trades and professions on which the question may arise. If such a method is better for the revenue, it is equally advantageous for the taxpayer, for if arbitrary rules provide in certain cases a means of evasion, they may work in others a serious injustice, when by some accident the formal conditions of liability are fulfilled. On the whole it is fairer to look to the reality than to the form of a business in determining its taxation. In another respect the method has the qualities of its defects. If it lacks definiteness, it has elasticity. If a mistake is made, it can readily be corrected, as in the case of the doctrine of "constructive remission" (3); if the law wants stretching, it can be readily stretched, as in *Colquhoun* v. *Brooks*. But under a system of clear, consistent, exhaustive and highly formal regulations, there can be no emendation except by statute.

Considered, therefore, as a code by itself, it may well be argued that the taxation of foreign income should be a system of the elastic rather than the rigid type. But it is also a

(1) Cf. the words of Jessel, M.R. (2 Tax Cases, at p. 411): "There are a multitude of things which together make up the carrying on of trade, but I know no one distinguishing incident, for it is a compound fact made up of a variety of things."

(2) See p. 42, *infra*.

(3) See p. 13, *infra*.

branch of the income tax, and as such is governed by the laws which apply to the greater system. In the first place, the income tax is a composite tax and not a single contribution. The five schedules are scarcely paralleled by the whole of the four great direct levies of France (1). And yet, though the five schedules are part of one scheme, there is no formal connection between them except in claims for exemption or abatement. A man may or may not pay on his whole income, but he is not asked to disclose his whole income unless he wants to avail himself of our system of exemption and abatements. Now, when the whole income is disclosed, it is possible to define income by self-acting rules, because income in such a connection has only one meaning. It is considered only in its relation to the recipient. But when income falls under five schedules it bears a different sense in each, since it must be considered, by the mere fact of such sub-division, in relation to its source; and it would be a work of great complexity to prepare definitions which would be at once simple enough and comprehensive enough. Again, income, under a few arbitrary heads, might be an evasive thing unless governed by fixed rules; but the five schedules are in themselves exhaustive and make legal evasion difficult. The fact, then, that income is not taxed as a whole makes a rigid system impossible, and the fact that it is taxed, nevertheless, under exhaustive categories makes it unnecessary. Wealth which escapes under one schedule is taxed under another. If, because business is not defined as under the *Patente*, so as to include all types of wealth, certain revenues escape under Schedule D. they will fall a victim to Schedule A. or Schedule C. In the second place, the income tax, to use a convenient distinction, is both real and personal in its incidence; that is to say, it is assessed on persons, and also on

(1) *Contribution foncière, Contribution mobilière, Contribution des portes et fenêtres, Patentes;* to which may be added the *Impôt sur les valeurs mobilières.* See p. xli, *infra.*

objects apart from persons. Lands, stocks, and salaries, which are taxed at the fountain-head, pay, in the first instance, irrespective of their owners. Or, if we wish to emphasize the fact that all payment is made by persons, we may say that the tax is levied sometimes upon the ultimate subject and sometimes upon the payee. Business profits under Schedule D. are taxed with regard to the subject, but it is the payee who is taxed under Schedules B. and C. The consequence of this practice is that the revenue has to face two wholly different types of assessment. If the payee only were in question, if, that is, the tax were levied only on objects, it would be easy to frame and follow rigid rules. As a matter of fact, the taxation of dividends both under Schedule C. and Case V. of Schedule D. follows the simplest and most arbitrary of methods. But the very simplicity of the practice in this case makes it inapplicable to income, such as is comprised in other parts of Schedule D., which is uncertain and variable in its yield. Hence the revenue must either adopt separate methods, recognising the real distinction, or sacrifice the simplicity and certainty of its method in the case where the income is taxed at its fountain-head, and have recourse to some modified scheme of rules which can apply without too much straining to both cases. It has naturally preferred to accept the first alternative, and use self-acting rules when they are suitable and pursue a more elastic method when they are not. In the third place, the principle which lies at the root of the actual mode of assessment puts an absolute system of self-acting rules out of the question. It was the design of its authors to make the administration of the income tax as simple as possible, and to fit it in with the existing machinery in connection with the assessed taxes. The taxpayer either makes a declaration of his profits, or he is assessed on what the assessment authorities consider the probable sum. But the right to a declaration implies that the taxation shall be of *real* profits, for, obviously, it would

be absurd invariably to ask a private citizen to apply to his income formal rules which an official could apply with far greater ease and certainty. Under the French *Patente* there are long lists of specified trades, and schedules of charges, static and variable, based on the population of the district and the rent of premises for business or residence. These are the foundation of what can never be more than a proximate assessment of profits. Obviously, such a system does away with the declaration of the taxpayer and his right to be assessed on what he makes and not on what an official thinks he makes. It may be said that this argument mistakes cause for effect; but in view of the origin of the English income tax, it seems certain that the right to declare and verify private profits was one of the sources of the elasticity of our system and not merely a consequence.

We may therefore conclude that the taxation of foreign income, whether considered as a code in itself or as part of the income tax code, has for its chief structural feature a certain elasticity, and owes to this much of its efficiency. It leaves undefined certain vital questions of fact, and cannot in consequence be dogmatised upon beyond a certain limit. The remaining questions concern its practical intelligibility and its economic soundness. We have already seen that in such a system clearness and certainty are relative terms. It is of its essence that it shall not be quite clear or perfectly certain, and any attempt to formulate it with a false simplicity can only end in disaster. At the same time, it is easy to err on the other side, and reduce it to a collection of sporadic rules and unrelated decisions (1). The system is governed by principles; and though there are undefined matters of fact which stand up like rocks in an ocean, there

(1) The admirable final appendix to Dicey's Conflict of Laws, which deals with the question of foreign income, attempts to subsume the practice under too few principles, with the result that a number of points have to be left unrelated and therefore unexplained.

are laws which govern the tides. The aim of this volume is to re-state such principles as are apparent, and to chart and beacon the residuum of ambiguities. All books on taxation are apt to claim that theirs is a "new cleare way," or "a plain, short and easy description," but no attempt has been made to make simple what is necessarily complex. The uncertainties which exist are, in the main, organic in the system; but undoubtedly the matter has not been made better by the tendency of the Courts to exaggerate difficulties and emphasize the apparent inconsequence of certain decisions. Much of this is due to the kind of process which the interpretation of revenue Acts involves. The general language of a statute has to be subjected to a most precise analysis in order to include the endless variety of possible cases. The result of such analysis is that a distinction is refined to a hair's breadth, which may appeal to one mind with overwhelming conviction, and to another seem merely a quibble. But this, though specially common in revenue law, is inevitable in all law, and it does not detract from the intelligibility of the system. Nor is there any dubiety in the policy of the Acts, or in their wording, or in their canons of interpretation. They aim at exacting revenue from the whole income of British residents from whatever source it comes, and from all income earned in the country and paid or payable to foreigners. Judges may have dissented from the economic policy involved, but it was not their business to reform it. "It is vain to deny," said Chief Baron Kelly, "that the Parliament of this country taxes foreigners, not natives of this country, not inhabitants of this country, and not within the jurisdiction of its laws. I would it were otherwise" (1). The puzzling judgment in *Colquhoun* v. *Brooks* may be based rather on general notions of fair dealing than on purely legal grounds; but there is

(1) *Calcutta Jute Mills Co.* v. *Nicholson*, 1 Tax Cases, at p. 92.

at least no attempt to import into the discussion questions of political expedience. Nor are the statutes themselves more obscurely drawn than the subject warrants. Sir Robert Peel's famous Act of 1842, and its amending and consolidating successor of 1853, are remarkable performances in legislation, and it may be doubted if any laws, dealing with an enormous, complex and novel subject, have ever survived so long with so little substantial complaint. The theory of interpretation, too, is fairly well established. It is their intention to grant his Majesty a revenue; and, with this intention in view, the words of the enactments must be closely scrutinised and given their strict natural meaning. The principle has been admirably stated by Lord Cairns: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute" (1). We have, therefore, a system clearly set forth in Acts which must be exactly construed, embodying a well-defined purpose, and capable of being resolved into a certain number of principles together with several questions of fact, which are not accidental but organic, and therefore are themselves equivalent to a principle. Structurally it need fear no comparison with any revenue code elsewhere.

(1) *Partington* v. *Att.-Gen.*, L. R. 4 E. & I. App. H. L. at p. 122. For a full account of the principles of interpretation in the case of Taxing Acts, cf. Dowell, Income Tax Laws, 5th ed. pp. lxv—lxvii.

II.

ITS ECONOMIC VALUE.

The economic aspect of the system may be very briefly dismissed. Except on one point the taxation of foreign income has the same economic character as the income tax, and any attempt to treat the matter at length would lead us far from our proper subject. The one point that concerns us is the question of double taxation, which in a special sense belongs to the branch we are dealing with (1). The practice of double taxation has, as a rule, been discussed on its formal side, and the questions raised have usually been concerned with the possibility of squaring the fact with this or that theory of the distribution of taxes. Most people would condemn the practice as frankly inequitable; and inequitable it is, if a man is considered as an individual only, or as a citizen of the world, for he is undoubtedly paying cess twice over on his income, when in theory there is no call for more than a single demand. The fact that this income is related at some time in its career to two separate States is not sufficient to justify a double assessment, if the political aspect of taxation is ruled out of Court. But such a ruling out is impossible. A State looks not at the formal income but at

(1) It should be remembered that in relation to foreign income, the income tax is necessarily seen at its worst, since the chief question is one of locality, and this is a question foreign to the nature of the tax. It is the same difficulty which has arisen in attempts to tax income for local purposes. "It appears to be impossible to devise an equitable local income tax, for you cannot localise income. An attempt was made in Scotland, and it broke down when an English Lord Chancellor, who drew his 10,000*l.* a year in London but had a small place in Scotland, was made to pay income tax on the whole of his income in that country as well as in this." Lord Goschen, Local Taxation, p. 204.

the man who receives it, and, if it can get him within its power, it will not scruple to enact tribute. The real question is not whether the practice conflicts with a formal theory of taxation, but whether it is practically advisable; whether it is an impost which bears so hardly upon the producer as to check the production of income and drive the income-receiver to limit his international activities; whether a State in exacting a small direct contribution may not preclude itself from receiving the much greater indirect receipts which attend the residence of aliens. If we show an undue taste for golden eggs, the goose may desert the nest and seek easier latitudes. "That fair virgin, Public Credit," in Addison's words, "has the most delicate and susceptible constitution"; and her constitution grows no robuster with the progress of time, while the influences which may harm her increase in number and complexity. Double taxation is, in substance, a form of protection, but because it masquerades as revenue, it escapes the strictures of those who are quick enough on other occasions to see a short-sighted policy in protective measures. As a form of protection, therefore, its value depends on the maintenance of an equipoise between the certain gain to the public revenue and the possible loss to the commercial organism.

Double taxation arises in England under the system when, for example, a French wine merchant pays tax on the income of his English agency, which income is also brought into charge as business profits in France; or when the owner of a copper mine in Italy pays Italian income tax on all his profits, and English income tax on such part as is remitted home. The only remedy for the grievance is a series of international treaties under which income produced and taxed in one country is spared taxation in the country in which it is paid, or, conversely, the taxation of profits received excuses the same profits from assessment at the place of production. Such treaties, it should be noted, would not necessarily be

based on reciprocity, for the negotiating States might be in positions so wholly different as to make reciprocity inapplicable. It would be ridiculous, for instance, to exempt Argentine property held in England from taxation in return for a similar exemption of English property held in the Argentine. But an agreement on the basis of mutual benefit is a possible, and in most cases a simple, solution. It is a method which has been followed by several Continental nations, and there are even revenue systems where, independent of any international agreements, profits in the foreign country of origin are exonerated from domestic taxation (1). In England we have made no such concession to international equity. Our revenue system exacts unblushingly a levy from all who come under its power, both from our citizens and those who seek for some special purpose the hospitality of our shores. This practice will be seen on a little reflection to be a logical corollary to the system of a general income tax. How are receipts to be apportioned between the country of residence and the country of origin? Clearly, if any apportionment is to be made, the more personal forms of income, such as those accruing from the exercise of a trade or profession, would belong to the country of residence; while taxes on objects, whether lands, shares, or businesses not personally supervised, would go to the country of situation. But such an allocation assumes the existence of separate taxes, capable of being distinguished not only in their economic bearing, but in their practical incidence and mode of collection. A general income tax ranks all forms of profits together, and no special produce taxes stand outside it. In England, therefore, we have no basis for international agreements (2), and those revenue

(1) For instances, see the next section.

(2) This does not touch the question whether within an Empire where there is presumably in the last resort a single fiscal interest, there should not be some arrangement by which two States which

systems, framed on the English model, which have embarked on them have sacrificed one of their most valuable features. To attempt such a distinction would land us in logical and practical inconsistencies, which would be at least as grave as the "almost insoluble puzzles" which Professor Bastable finds in the present practice.

In reality the only economic question which need be considered is the effect of our system upon foreign trade—the equipoise to which reference has been already made. There is a danger that corporations and individuals may be prepared to forego the advantage of an English residence if the tax should press too hardly. Take such an instance as the *Goerz Case* (1). There we have a foreign company whose shareholders and directors are mostly foreign, whose mining work is carried on abroad, whose place of registration is out of England. It requires a head office in a great financial centre and it selects London. But if it is taxed on all its profits, little of which come to England, is it not likely that such a company will prefer to select a different and an easier residence? Other things being equal, no doubt it would, if it could find it. There is no special pleasure in paying taxes; and if it can be avoided without attendant drawbacks, avoided it will

contribute to the production of income could share proportionately in the yield of the tax. The recent *De Beers Case* (see p. 44, *infra*) is an instance in point. If the company in question resides only in England, then Cape Colony, which is the producing ground, loses all share in the profits (which means the bulk of the yield of the tax). If, again, the company resides both in England and Cape Colony, and has to pay a full tax on all profits to both Governments, the result is politically deplorable, since a colonial company is really penalised for its choice of a London office. Advocates of Imperial fiscal union might well turn their attention to this anomaly, which could be remedied by a simple Act, declaring that where profits are liable to an income tax in any British colony or dependency, they should not be liable in Britain to any tax greater than the difference between the colonial and British income taxes.

(1) See p. 43, *infra*.

be. It would be a real misfortune if we were to scare away the many foreign companies which to-day use the financial and commercial advantages which London gives them. We may be sure that it is no sentiment that brings them here; but only the solid commercial benefits of the English centre. If the superior merits of London are so far neutralised by the incidence of our taxation as to make the inferior amenities of Paris or Berlin really preferable, then it is undoubtedly a serious defect in our system (1). The following section contains a brief survey of the chief methods of taxing foreign income in vogue abroad; but here we may note what seems to be the deduction from this summary. The question chiefly concerns companies or individuals that do business principally or entirely in countries which do not contain one of the financial centres of the world—a South African mining company, a Roumanian oil company, a Persian tobacco company. If a corporation has its business in Germany, it is obviously for its advantage to reside there. But when a company has to choose a European financial centre, assuming that London would normally be chosen, will our revenue law tend to turn the scale in favour of Berlin or Paris? It is a difficult question to answer confidently, since the practical application of a law is never quite the same thing as its formal provisions, and, moreover, to reach a proper understanding of the position, the whole foreign revenue system, direct and indirect, should be considered, and especially the Bourse taxes and stamp duties, which may be as vital to a company's welfare as any tax on income. On the whole, however, it is doubtful whether such a company would gain anything, so far as the taxation of income is concerned, by transference to a Continental centre. In the first place, a

(1) Cf. the speech of M. Félix Faure in the debate in the French Chamber on the subject on 24th February, 1893, and the report of the Commission appointed thereafter. (*Revue politique et parlementaire*, Oct. 1894.)

general income tax already exists in many Continental countries. In the second place, where there is no income tax, there are often separate taxes which in the aggregate impose a similar or a heavier burden. It is true that a number of sporadic taxes are easier to evade than one general tax, and that, for example, the French *Impôt sur les valeurs mobilières* is less likely to sweep in foreign investments than our Schedules C. and D.; but such loopholes of escape are growing narrower daily, and in any case are only possible for the smaller and less reputable corporations. In the third place, most Continental revenue systems are still highly empirical. Changes are loudly canvassed, and in France, to take an instance, a succession of Finance Ministers from M. Doumer to M. Rouvier have advocated a general income tax, which has also been sanctioned by so high a financial authority as M. Chailley. If, as is generally admitted, the most valuable quality of a revenue code is certainty, then it is a virtue which foreign codes conspicuously lack, and our own as conspicuously possesses. Whatever its faults, our system is well established. For sixty years foreign income has been taxed substantially in the same way, and now that the interpretation of the Acts has been clarified by many decisions, and the few ambiguities retained on purpose to give elasticity to the system, there seems no reason to contemplate any serious change. Our statutes may be occasionally uncertain, but at least we do not suffer from any uncertainty of principle [1].

[1] The reader may be referred to the admirable Blue-book just issued on Graduated Income Taxes in Foreign States (c.d. 2587), which contains a general analysis of foreign systems.

III.

TAXATION OF FOREIGN INCOME ABROAD.

The following summary can only be an approximation to the truth. If a citizen of another country attempted to describe our taxation of foreign income, a mere study of the revenue Acts would give him but a scanty appreciation of the principles involved. In the same way, to describe the methods of a number of States from their published codes will give us no more than a formal perception of their effect. Generally speaking, foreign systems may be divided into those which are parallel to our income tax, and those which aim at the specific taxation of separate classes of profits by means of different imposts. Some, indeed, combine both types; but it will be more convenient to take the total system of each country by itself, rather than use a classification which might cut across national practice. In one respect these foreign systems have a greater simplicity than our own. For in Continental States, which own a land frontier, there is a far greater interconnection between business houses, banks, railways, &c., than in an island nation. Hence foreign income is a matter of the first importance, and in most cases its taxation is explicitly defined, instead of being left to be deduced from a general tax.

FRANCE [1].

The principle which governs French taxation of foreign income is that foreign and domestic income must be con-

[1] This section owes much to M. Jobit's monumental work, Régime Fiscal des Valeurs Mobilières en Europe (2 vols. Paris, 1901-2), published by the authority of the French Ministry of Finance. These volumes, with a third on Bourses de Valeurs, published in 1903, form by far the most comprehensive account in existence of the European practice in taxing stock and the profits of companies. The question of foreign income is, however, only lightly touched on, since M. Jobit's work covers only one part of the subject.

sidered on the same basis for revenue purposes: "Le principe qui domine tout le régime fiscal des sociétés étrangères, celui de l'équivalence entre les taxes que doivent supporter ces sociétés et celles auxquelles les sociétés françaises sont assujetties." At the same time such taxation is regarded as a "territorial impost," and foreign income cannot be subject to a direct imposition. A compromise has therefore been accepted, and foreign income is only taxed indirectly, that is to say, when it assumes certain forms which come easily within the cognisance of the government.

Of the five direct contributions in France, the only two which concern foreign income are the *Patente* and the *Impôt sur les valeurs mobilières.*

I. The *Patente.*

This is a charge upon the profits of companies and individuals resident in France, which is not levied on a declaration of income by the payee, but on a figure assumed by the revenue, arguing from certain external signs of prosperity. Any foreign company or individual with a French establishment is liable to the tax. The present system was inaugurated in 1796, and has been amended by a multitude of later measures. It applies to all occupations and professions which are not, like agriculture, specially exempted.

The tax is divided into two parts: a fixed duty—which, however, is, in practice, a graded one—and a proportional duty. It comprises four tables, which provide the different cases under which the fixed and proportional duties are to be levied.

Under Table A. the amount of the fixed duty depends on—

(a) The nature of the occupation;

(b) The population of the *commune* where it is carried on.

Shopkeepers and small merchants come more particularly within the class under Table A. Similarly, under Table B.,

the fixed duty depends on the population of, and the nature of the industry carried on in, the *commune*. A special tariff, varying from 1*l.* to 80*l.*, is established for this purpose. This class specially embraces "le haut commerce."

Under Table C. there is a fixed duty for each trade, with extra payments for each workman employed. Manufacturers and "les industriels proprement dits" come under this class.

Table D. contains the fixed duty on salaries.

The proportional duty is a percentage of the letting value of a man's residence and business establishment. It varies from 10 to 2½ per cent. under Table A., 10 per cent. under Table B., and 6·6 per cent. to 2 per cent. under Table C. To take a single instance, a manufacturer under Table C. would pay—

(a) A fixed duty for the trade;
(b) A fixed duty for each workman employed by him;
(c) A proportional duty on the letting value of his residence;
(d) A proportional duty on the letting value of his factory.

The yield of the *Patente* has grown much in recent years. In 1830 its total amount was only 28 millions of francs, in 1890 it had grown to nearly 180 millions, and in 1900 it reached over 206 millions, or more than 8,000,000*l.* (1).

II. The *Impôt sur les valeurs mobilières.*

This tax on the shares of home and foreign companies was established by the Law of 29th June, 1872, and fixed at 3 per cent. The rate was raised to 4 per cent. in 1890. The Law of 1872 enacts that the shares of all companies, corporations, &c., cannot be "cotés, négociés, exposés en vente ou émis en France qu'en se soumettant au payement

(1) For a full description of this very complicated tax and specimens of its working, see Jobit, I. pp. 430—436; Bastable, pp. 457—459; Leroy-Beaulieu, I. pp. 393—414; Wagner, III. pp. 468—489.

des trois taxes de timbre, de transmission et d'impôt sur le revenu, supportées par les titres des sociétés françaises." It is levied on (a) all interest, dividends, revenues, &c., from the shares of any form of company; and (b) the profits of companies, societies, or enterprises whose capital is not divided up into shares. For profits to be liable they must be distributed to shareholders or members of the corporation concerned. In joint stock companies the assessable profits are determined by the dividend declared. The company is required to make a return of its profits, failing which, the revenue will assess it, as in England, on its assumed earnings. The tax is also levied on the interest of all debentures, mortgages, and loans of companies or public bodies. The tax is in all cases levied at the source, being paid in advance by the company and recovered from the shareholders or creditors. So far as concerns variable profits, such as dividends, the tax is levied and paid provisionally on four-fifths of the revenue of the last year of assessment, the company and the government ultimately fixing the exact sum and paying or re-paying the balance.

Foreign income, in relation to this tax, may be considered under three forms:—

A. The profits from foreign public stock;

B. The profits from the stock of foreign companies whose shares circulate in France;

C. The profits from the stock of foreign companies whose shares do not circulate in France, but which possess property in France.

Foreign Public Stock.

Dividends from the public funds are not taxed, and the exemption has been extended to dividends from the funds of foreign governments. The reason of the exemption, so far as foreign dividends are concerned, seems to have been less a question of policy than of the difficulty of finding in the

French revenue system, with its absence of anything like a general income tax, machinery competent to reach this form of income. The exemption only applies to the stock of foreign governments, and not to the stock of foreign municipalities, provinces, or public bodies (1).

Foreign Companies whose Shares circulate in France.

Art. 4 of the Law of 1872 provided that the shares of foreign companies should be "quoted, negotiated, bought and sold in France" only after payment of the tax on profits. By putting the warrant of taxation in an official quotation, the government gave a loophole of escape to foreign companies whose shares were manifestly dealt in in France, but only through private channels. Many attempts were made by the revenue to deal with the difficulty, and finally in Art. 12 of the Law of 13th April, 1898, the mere introduction of shares on the French market, and the performance of certain financial duties in connection with them, are made grounds of liability, and the person performing such acts is held responsible for the payment of the tax under penalties. Each foreign company is, further, required to appoint a representative responsible for the payment of taxes, and till such an appointment all transactions in the shares of the company are forbidden under penalties. Such a representative stands in the place of a surety, and guarantees on his personal property the payment by the company of all debts to the State, and the appointment must be approved by the Ministry of Finance. In this matter there is no distinction between the different foreign countries. Obviously, it might be difficult in many cases to find a representative prepared to take upon himself such heavy responsibilities, so a foreign company is allowed to escape the obligation by depositing

(1) See the laws of 30th March, 1872, Art. 1, and of 29th June, 1872, Art. 4, and the report of the Committee of the Budget in 1872.

with the Treasury a certain sum as caution-money, the amount of which is determined by the Ministry of Finance. This sum carries interest at 2 per cent., and is liable for all Treasury debts owing from the company which deposits it.

The other point of importance is that such foreign companies do not pay the tax on all their dividends, but only on the part which is taken as proportionate to the French circulation of their shares. This was established by Art. 10 of the Law of 1857, and the amount is settled by agreement between the company and the Treasury, subject to certain fixed rules. The Law of 1872 fixed a minimum of taxable dividends—one-tenth in the case of shares and two-tenths in the case of debentures—below which no assessment should go, even though the company proved that in fact its business in France did not amount to so much. A company, therefore, with 50,000 shares and 20,000 debenture bonds is compelled to pay on not less than 5,000 shares and 4,000 debentures. This provision is a good instance of the arbitrary rules which are always necessary in the long run when an attempt is made to tax by formal categories. The proportion on which the company pays holds good, without appeal, for three years. One merit of the system is that it is the interest of a company to make a true return of its actual French business, since otherwise the decision will be left to the Ministry of Finance, which may be trusted not to make an underestimate.

Foreign Companies whose Shares do not circulate in France, but which possess French Property.

Every foreign company whose shares do not circulate in France, but which owns property (in the largest sense of the word) in France, or which has contracted debts in France, is bound to appoint a representative, who is responsible for the payment of all taxes and penalties which may be due from it, or to deposit caution-money for the same purpose.

It must also fix, by agreement with the Ministry of Finance, what proportion of its revenues is taxable, and the proportion is intended to represent that part of its assets which has a French domicile.

The procedure is the same as in the case of the company whose shares circulate in France except on one point. There is no minimum exacted by the Treasury, and the amount is fixed to correspond to the actual amount of French property (1).

The yield of the *Impôt sur les valeurs mobilières* was 1,250,000*l.* in 1873, its first year, and increased to more than 2,000,000*l.* in 1890, the last year of the 3 per cent. basis. On the 4 per cent. basis it realised in 1902 more than 3,000,000*l.* Of this figure, the part contributed by foreign income is not very large. In 1899, for example, French companies paid under the tax 2,650,000*l.*, while foreign companies contributed only some 270,000*l.*, of which 240,000*l.* was paid by companies whose shares circulated in France, and 30,000*l.* by those which only possessed French property. It is curious to observe the nationality of the foreign companies assessed. Belgium comes first with 66, then Britain with 59, Spain with 31, the Transvaal with 25, Russia with 18, and Turkey with 13. So far as concerns the nominal amount of shares, Britain is first with over 13,700,000, the Transvaal coming next with 9,600,000, and Portugal third with nearly 1,900,000. But when we look at the value of the share capital liable to taxation, corresponding to the business of the country in France, there is a change in the order. On nominal value, Spain is first with over 9,000,000*l.*, and Britain third with 5,000,000*l.* On market

(1) See, for a full explanation of this tax, Jobit, I. pp. 354—390; and the more specialised treatises by the same author, Le Régime Fiscal des Valeurs Mobilières Étrangères en France (Paris, 1893), and Les Valeurs Étrangères et les Lois d'Impôt (Paris, 1899). See also Caillaux, Les Impôts en France (Paris, 1896).

value, Egypt is easily first with 23,000,000*l.*, and Britain second with 12,000,000*l.* In actual amount of tax paid, Egypt, with only four companies, comes first, Spain second, Austria third, and Britain fourth—which may be taken as the order in which foreign States make use of the French markets (1).

THE GERMAN EMPIRE.

In the Imperial system of taxation there is nothing which resembles an income tax. In the several States which compose the Empire, we find two fiscal peculiarities worth noting. No serious attempt has been made at any mutual adjustment. The Law of 13th May, 1870, which tried to introduce something of the sort, has been very generally disregarded, and each State has a self-subsistent revenue code, which puts the inhabitant of another German State in the same class as the foreigner for the purposes of taxation. The second peculiarity is the number of taxes and surcharges for local and municipal purposes, which often duplicate the actual payment, and form a subsidiary revenue system complete in itself.

Prussia.

The taxes which affect foreign income are the income tax, with its supplementary tax on capital, and the local taxes on income and on professions and industries.

The income tax (*Einkommensteuer*) was introduced in 1851, but it owes its present form to the Law of 24th June, 1891. All incomes under 45*l.* are exempt, and above that the rate is graduated, the incomes being arranged in groups, for each of which a rate is fixed. For example, an income between

(1) It should be noted that these figures, which are taken from M. Jobit, are framed on a basis which includes the total taxation on shares, *i.e.*, stamp duty, transfer dues, and income tax, and are therefore only a rough index to the working of the special taxation we have been considering.

75*l.* and 82*l.* 10*s.* pays a tax of 1*l.*; one between 150*l.* and 165*l.*, 3*l.*; 400*l.* pays 12*l.* 10*s.* With the larger incomes the rate advances for every extra 50*l.*, so that an income of 5,000*l.* pays a tax of 195*l.* Since the rate is fixed and not variable from year to year with national requirements, the Prussian income tax clearly differs in theory from its English prototype. In other respects it is very similar. It is levied on all incomes without distinction of origin. The assessment, as with us, is, for the most part, based on the declaration of the taxpayer. With regard to the profits of companies, the assessment is on a three years' average of profits. Foreign companies are required, in addition to their general returns, to deposit special schedules of the business done by them in Prussia and in the other States of the German Empire.

The supplementary tax on capital (*Ergänzungsteuer*) aims at filling up the gaps left by the income tax, as well as imposing heavier duties on funded property (*fundirtes Einkommen*) as compared with the proceeds of labour (*Arbeitseinkommen*). The rate is only ½ per thousand, or 1¼ per cent. on an income calculated at 4 per cent. A capital value of 100,000*l.* pays, therefore, 50*l.* Property under 300*l.* is exempt, as is also the capital of companies.

The local taxes on revenue and on professions and industries scarcely fall within our subject, but we may note that, between State and local taxation, a business will pay about 10 per cent. on its net income.

The income tax for the years 1892-3 yielded over 6,000,000*l.*, and in 1901-2, 9,300,000*l.* The supplementary tax on capital reached about 1,700,000*l.* in 1902, which is only about 18 per cent. of the greater tax.

Bavaria.

Bavaria possesses three taxes which concern foreign income.

A tax on capital (*Kapitalrentensteuer*), based on the increment from it, real or assumed. It is immaterial for this

purpose whether the interest, dividends, &c. are handled in Bavaria or elsewhere. The rate varies from 1½ per cent. on dividends ranging from 3*l.* 10*s.* to 5*l.* to 4 per cent. on profits of 5,000*l.* or above. The assessment is made on the declaration of the taxpayer. Bavarian subjects who reside habitually abroad, and foreigners who are domiciled in Bavaria, or who have resided there for more than a year, pay on all their profits under this category, whether received in Bavaria or not. There is, however, one interesting exception. The State has power to exempt from the whole or part of this tax foreigners who have already paid duty on their profits in their country of origin.

The tax on industries (*Gewerbesteuer*) follows the lines of the French *Patente.*

The income tax is a supplementary tax, and is levied on those incomes which have not paid under either or both of the preceding taxes. Roughly speaking, it would correspond with our Schedules A., B., part of D. and E. The assessment is made after a declaration of the taxpayer. There is no limit of exemption, and the rate varies from 6*d.* on incomes up to 25*l.* to 10*l.* for an income of 700*l.* Above that from 1*l.* to 2*l.* 10*s.* is charged for every extra 50*l.* of income.

Saxony.

Saxony was the first German State to admit a classified and progressive income tax. It is levied on net annual receipts, joint stock companies, however, being assessed on a three years' average. Persons whose annual income does not exceed 20*l.* are exempt, unless they have their domicile outside of Saxony, in which case they pay tax on their Saxon income, however small [1]. Assessment is by declaration, and the rate varies from 1*s.* on an income of 20*l.*

[1] See p. 80, *infra.*

to 15*l.* on an income of 550*l.*, after which it increases first by 1*l.* 10*s.* and then by 2*l.* 10*s.* for every extra 50*l.* of income.

Saxony also possesses a system of local taxation of income which is outside our survey.

Alsace-Lorraine.

Alsace-Lorraine has recently established an ingenious revenue code (1901-3), which deals explicitly with foreign income. All income of capital is liable irrespective of origin. The three classes of taxpayers are—

(1) The citizens of Alsace-Lorraine and those other Germans who have their residence in Alsace-Lorraine.

(2) The corporations, societies, &c., which have their seat in Alsace-Lorraine.

(3) Foreigners who are resident in the country, or who have an establishment there, or who dwell there without a break for one year, or, with breaks, for three years.

Among the deductions allowed in arriving at the assessable income is included any tax payable to a foreign government on behalf of foreign income. Foreigners who are resident both in Alsace-Lorraine and abroad, or who have no establishment in Alsace-Lorraine, or whose residence there is not continuous, only pay on their income in proportion to the time spent there in the last three years. The method of assessment is by a declaration of the taxpayer. The rate is 3 per cent.; but in the lower classes only a part of the income is assessed, varying from 40 per cent. of incomes ranging from 5*l.* to 20*l.* to 90 per cent. of incomes from 150*l.* to 200*l.*; above 200*l.* the whole income pays duty.

The remaining German States have little importance. Würtemberg and Baden possess income taxes framed in the main upon the Prussian model. The Grand Duchy

of Hesse has a graded income tax, as also Hamburg. The little States of Bremen and Lübeck have no fiscal peculiarities (1).

AUSTRIA-HUNGARY.

The Imperial fiscal system does not include any income tax, consisting entirely of customs duties and the matricular contributions from the separate States.

Austria (2).

The fiscal system bears a considerable likeness to that of Bavaria. The three great imposts which concern foreign income are the tax on industries and professions, the tax on the revenue of capital, and the general tax on personal income. These three together produce a very fair equivalent to a general income tax.

The Tax on Industries (Erwerbsteuer).

Unlike most similar taxes, this is framed less on the analogy of the French *Patente* than of the English Schedule D. It is levied on the profits of (a) individuals; and (b) corporations and associations of every type. The rate is 10 per cent. on the profits, with a minimum of 1 per thousand on the capital of the undertaking, both capital and profits being interpreted so as to include debentures and debenture interest. The assessment is by declaration.

The provisions with regard to foreign income are curious and elaborate. The general principle is that foreign companies

(1) For German revenue system, see Jobit, I. pp. 1—93; Bastable, Public Finance; the works of Cohn and Wagner; Grossmann's Handbuch der directen Steuern in Preussen (1899); and the various volumes of the Statistisches Jahrbuch für das Deutsche Reich.

(2) *I.e.*, the various provinces which are represented in the Reichsrath.

pay on the same basis as Austrian, but the rule admits of many exceptions.

(1) A company with an Austrian domicile which extends its operations to a foreign country pays on its foreign profits, unless it has an establishment in the foreign country, or something in the nature of a permanent "*matériel d'exploitation*" (*e.g.*, railway trucks), in which case profits from the fixed establishment are exempt from the Austrian tax, so long as they are not taxed in the country of situation.

(2) The sale of foreign goods in Austria or of Austrian goods abroad makes a company liable on a minimum of one-half its profits from such transactions, and on a minimum of two-thirds if it has works of any kind in Austria.

(3) Companies which have an Austrian seat, but whose activity is wholly foreign, such as, *e.g.*, the *Compagnie des Chemins de fer orientaux*, pay on a minimum of one-tenth of their total profits.

A foreign company forming a branch in Austria must appoint a representative with whom the Treasury can deal, and must furnish special detailed accounts of its capital and profits.

The Tax on the Revenue of Capital (*Rentensteuer*).

This is a supplementary tax, and all profits which have been assessed under the last tax are exempt from it. Dividends from Austrian public stock are liable, with certain exceptions, such as the Unified Debt (which, by the Law of 1868, is subject to a deduction of 16 per cent.) and the non-unified loans of 1854 and 1860. The dividends of the Austro-Hungarian Bank are also exempt, and persons whose total income does not exceed 48*l.* The rate is 10 per cent. on the dividends of public stock, and from 1½ per cent. to

3 per cent. on other interest, according to the nature of the concern. The tax is paid by deduction at the source, whenever possible, and, if not, after a declaration by the taxpayer.

The provisions with regard to foreign income are elaborate. All income derived by Austrian subjects from capital abroad, or by foreigners, whether or not resident in Austria, from Austrian capital, is liable to the tax, with the following exceptions:—

(1) Dividends from foreign capital, if subjected in their country of origin to a special tax, and not merely to a general income tax, are not so liable. French dividends, it would therefore appear, which are subject to the *Impôt sur les valeurs mobilières* would be held exempt, but not Prussian dividends, which pay only under a general income tax. The onus of proving the foreign tax lies on the claimant for exemption.

(2) Revenue from land or other immovable property abroad is not held liable to the tax, since it is assumed that in all countries such revenue is subject to some kind of *contribution foncière*.

(3) Dividends which pay by deduction in their country of origin are also exempt, such as Italian 5 per cent. *Rentes* and, *semble*, the dividends of most English companies.

There is a further provision that the Treasury may apply the principle of reciprocity in regard to foreign stock. An instance is found in its action as regards France in 1898. Austrian stock being submitted, with the exception of the *Rentes*, to a 4 per cent. tax in France, the Treasury decreed that French stock, other than that of the French government, should be taxed irrespective of the exemption given to foreign dividends liable to a specific charge in their country of origin.

General Tax on Personal Income.

This tax is levied on the year's income, or, if the profits are variable, on a three years' average. Austrian subjects pay on their total income if resident in Austria, and on the part derived from Austria if resident abroad. Foreigners who are resident in Austria for business purposes, or who have made a longer stay than one year, pay on their whole Austrian income, and on such foreign income as is remitted to them, unless such income is already subject to an analogous tax abroad. (It has been held by the Courts that the English income tax is not such a tax.) A foreigner, not resident in Austria, pays on any income he receives from Austrian property. In fixing the income assessable numerous deductions are allowed, and incomes of 48*l.* or less are exempt. Assessment is by declaration, and all incomes are classified in some 65 classes, the rate varying from about 6*s.* on an income of 48*l.* to about 148*l.* on an income of 3,840*l.*

The principle of reciprocity has been applied to this as well as to the last tax. The treaty with Prussia, for example, signed on 21st June, 1899, provided that landed or funded property should only be taxed in the country of situation, and personal property, in its stricter sense, in the country where the owner is resident. Save for this provision, and for its narrow scope, the tax—especially when it deals with foreign income—bears a strong resemblance to the English income tax.

Hungary.

Hungary follows the same formal lines as Austria in its taxes which concern foreign income, but varies them considerably in detail. Its first tax is one on the profits of companies, which is paid by the company and deducted from its dividends, according to the English system. The basis of the assessment is a three years' average. The rate is 10 per cent., and there is an additional tax on income, raised on

the same basis for local purposes, which reaches in amount some 30 per cent. of the principal tax.

Foreign companies which have branches in Hungary pay on their profits in the same way as Hungarian companies. They are assessed by means of their resident agent or manager. Companies, however, which have for their object the production of articles hitherto not manufactured in Hungary are generally exempt from this tax for fifteen years, and railway companies whose interests are confined to the bounds of Hungary are exempt for thirty years from the date of commencing operation, provided that after twelve years they are not paying a dividend of 6 per cent. Mines pay the tax on a reduced scale, coal mines paying only 7 per cent. and other kinds 5 per cent.

The tax on the revenue of capital covers everything except dividends on shares—debentures, mortgages, annuities, &c., and also income from lands, whether situated in Hungary or abroad, and whether owned in Hungary or abroad, provided that such income has not already been taxed by a State which has a reciprocity agreement with Hungary. Receipts for public stock or bonds are generally exempt, and those which do not exceed 48*l.*, provided the recipient has no other income (1).

RUSSIA.

The two great taxes which concern foreign income are the one on the interest of shares and the *Patente* on industrial and other enterprises. Companies are thus taxed with regard to their income and the capital which is employed to earn it.

The interest tax is levied, with a few exceptions, upon the

(1) For the Austrian revenue system, cf. Jobit, I. pp. 95—163; Sieghart, Finanz Archiv, XIV. pp. 1—110. For Hungary, Jobit, II. pp. 1—42; Jekelfalussy, L'État hongrois et son Peuple.

profits of all public and private stock (including the shares of railway companies), and the interest on current accounts and deposits of banks and investment companies.

The rate is 5 per cent., and there is a further special tax of ·216 per cent. on loans made by banks, &c. on securities. This latter charge has more resemblance to a stamp duty than to an income tax. The interest tax is paid by deduction at the source.

The *Patente* is levied upon all commercial and industrial undertakings, including banks and insurance offices, and the professions connected with them. The principal tax is fixed and elaborately graded, and runs from a minimum of 4*s*. to a maximum of 150*l*. The supplementary tax is levied on public companies (railway companies, however, being exempt) and enterprises, which are compelled to publish their accounts, and consists of a rate of $1\frac{1}{3}$ per thousand of the capital employed. Enterprises which make a profit exceeding 3 per cent. on their capital pay in addition a progressive tax, varying from 3 per cent. to 11 per cent. of such excess profits. This latter rate is levied quite independent of the $1\frac{1}{2}$ per thousand charge on capital.

Foreign companies resident in Russia pay the profits tax on their Russian profits, and the capital tax on the part of their capital connected with Russia, under the same conditions as Russian companies.

A new charge came into operation in January, 1899, which bears a close resemblance to our Schedule E. Under it all officials and directors of any company or corporation pay a tax of 2 per cent. on their emoluments [1].

[1] Jobit, II. pp. 270—301. The Russian revenue system may be studied in the stately reports which were issued by the Ministry of Finance under M. de Witte, and in the yearly issues of the Bulletin russe de Statistique financière et de Législation.

ITALY.

Italy possesses a general income tax which comes nearer to its English model than any other Continental imitation. It was first established in 1864, being based on a consolidation of the *Patente* and personal taxes of the separate States, and it owes its present form to the Law of 1877, as amended by the Law of 1894. As with all general income taxes, no distinction is made between foreign and Italian income, every person (physical or legal) paying on the income from personal property which is owned within the kingdom.

The English system of schedules is followed. Class A. embraces all permanent revenue, and is divided into (a) revenue from public funds and from local government loans, (b) all other permanent revenue. Class B. deals with mixed revenue, *i.e.*, that produced by the joint operation of capital and labour, and, roughly, embraces all industrial and commercial profits. Class C. deals with revenue produced by labour alone, such as professional earnings and salaries, and also revenue which is not actually drawn from either capital or labour, but may be said to be the product of past toil, such as pensions and certain forms of life interests. Class D. embraces the salaries of all public officials. These classes may be said to cover all the schedules of the English law with the exception of Schedules A. and B. Owners of land are not assessed to income tax, but come under the land tax. Tenant farmers, however, and metayers form a kind of fifth class, and pay $5\frac{1}{2}$ per cent. of the land tax.

The rate and the proportion of income assessable vary with each class. Income under Class A., sub-class (a), pays on the full amount, under sub-class (b), on three-fourths. The rate in (a) is 20 per cent., and in (b) 15 per cent. Under Class B. income pays on one-half and the rate is 10 per cent. Income under Class C. pays on nine-twentieths and the rate is 9 per cent. Income under Class D. pays on three-eighths,

at a rate of 7½ per cent. The minimum net revenue on which the tax can be assessed is 21*l.* 7*s.* under Class B., 25*l.* 12*s.* under Class C., 32*l.* under Class D. The chief exemptions, apart from income from the ownership of land, are the incomes of foreign diplomatic and consular (1) agents who do not carry on a trade in industry, of soldiers and sailors below the rank of officer, and certain parts of the revenue of insurance and benefit societies.

The method of assessment is partly by rule and partly by personal declaration. Income from dividends, interest, &c., is taxed at its source. Income under classes B. and C. pays on a two years' average. Under these classes the taxpayer makes a declaration of profits on which the assessment is theoretically based, but the revenue officers are empowered to correct such declarations, if they appear insufficient, by certain self-acting rules and presumptions.

The Italian income tax suffers much from evasion, chiefly owing to its high rate of charge, but on the whole its yield is remarkable. Although what corresponds to the English classes A. and B. is for the most part excluded, its returns have increased in the last twenty-five years by nearly 5,000,000*l.*, and in 1900 reached the creditable total of 11,500,000*l.* (2).

SPAIN.

The Spanish income tax, established by the Law of March, 1900, is closely modelled on the Italian, and is part of the great trilogy which M. Villaverde made the basis of his fiscal reforms. The tax is levied on all persons, natural and juridical, Spanish and foreign, in respect of all revenue earned or paid within Spanish territory. The scheme is less elaborate

(1) See p. 61, *infra*.

(2) Jobit, II. pp. 43—102; Bastable, pp. 483—485; Chailley, Impôt sur le Revenue, pp. 220—344; Imposta sui redditi di Ricchezza mobile (Rome, 1895 and 1900).

than the Italian, since it embraces only three classes. Class I. deals with revenue from personal toil. The rate varies with the nature of the work. Directors and managers of companies and bank agents pay 10 per cent.; minor *employés* of companies, insurance agents, actors, musicians and public entertainers pay 5 per cent.; retired State officials in receipt of pensions pay from 15 to 20 per cent.; officers of the army and navy, from 5 to 18 per cent.; other salaried officials, from 10 to 20 per cent. Salaries under 45*l.* are exempt. Class II. is concerned with revenue from capital, with certain exceptions. The interest on public debts pays 20 per cent.; banking dividends pay 5 per cent.; ordinary company dividends other than mining dividends, 3 per cent.; mining dividends, 2 per cent. Class III. embraces mixed incomes, based upon both capital and labour. Banks pay 15 per cent. on their profits; railway and canal companies, 7 per cent.; manufacturing companies, 6 per cent.; fire insurance companies, 2 per cent. (on their premiums); all other companies, 12 per cent.

Assessment is generally by declaration, all persons concerned being bound to make full returns of profits to the Treasury under penalties; but where returns are not forthcoming, the Treasury is empowered to make an assessment on such information as it can procure. Income, so far as possible, is taxed at the source, either in the hands of the State or of banks, secretaries of companies, managers, &c. The agents of foreign companies must make the same returns as Spanish companies; and it is specially provided that those who are entrusted with the payment in Spain of foreign dividends must deduct the tax and pay it in to the Treasury, receiving in return for their pains a bonus of 1 per thousand—an expedient which, to the best of our belief, has never been tried elsewhere (1). It will be observed that companies are subjected to a form of double taxation under this system,

(1) The same principle appears in Lord Goschen's conversion of the National Debt in 1888 (51 & 52 Vict. c. 2, s. 10).

having to pay under Class II. from 3 to 5 per cent. on their dividends, and under Class III. from 7 to 15 per cent. on the same sums, so that they may have to undergo a total assessment on declared profits of from 10 to 20 per cent.

BELGIUM and HOLLAND.

Foreign income enjoys in Belgium an immunity which is scarcely known elsewhere. There is no income tax, the Belgian Chamber having rejected the proposal in 1883 by 101 votes to 35, on the ground that it would drive trade out of the country and desolate the Belgian markets. The only tax which in any way affects foreign income is the *Patente*, which originated in 1791, and has been amended by a long series of Laws up to 1899. It has the familiar feature of its type, and its rate is 2 per cent. on annual profits, to which certain provincial and communal taxes are added, which make up a total of about 50 per cent. of the main tax. The Court of Appeal has decided that foreign companies are not liable to the *Patente;* it has therefore been provided by legislation that the provinces of Brabant (which includes Brussels) and Liège may levy a tax equal to that paid by Belgian companies on the net profits of foreign companies established within their borders. Such companies, however, are not taxed on all their profits, but only on the proportion which is realised in this or that province. Such a provision obviously gives infinite opportunity for evasion.

Holland, on the other hand, shows an elaborate and exhaustive revenue system, due to her ablest statesman and financier, Dr. Pierson. The fiscal reform of 1893-4 established two main taxes, the property tax and the tax on professional profits.

I. The *Property Tax.*

This is a tax upon individuals and not upon companies, and was intended by its author to tax indirectly the income from

capital as opposed to the profits of labour. Foreign diplomatic and consular agents are exempt, provided that they do not carry on a business or profession in Holland, and that the governments they represent extend the same courtesy to Dutch agents. The definition of property assessable embraces all personal effects which are not stock-in-trade, insurances, life rents and pensions. Fortunes under 13,000 florins (about 1,080*l.*) are exempt; between 13,000 and 14,000 florins the tax is 2 florins; from 14,000 to 15,000 florins, 4 florins; from 15,000 to 200,000 florins, $1\frac{1}{4}$ florins per 100 florins, the first 10,000 florins being exempt. Fortunes above 200,000 florins pay $\frac{1}{5}$ per cent. on the surplus. The assessment is made upon a declaration by the taxpayer.

II. The *Tax on Professional Incomes.*

This is, in substance, a limited income tax, the taxation of income from labour or from labour and capital combined. It is levied upon all inhabitants of Holland, both individuals and corporations; all who hold some office in connection with the Dutch government abroad, and who are not assessed to personal taxes in their country of residence; the partners, resident in Holland, of Dutch companies established abroad, and the partners, resident abroad, of companies established in Holland; railway companies with a foreign seat which extend in their working into Dutch territory; foreign companies which have funds in Holland and make contracts of insurance there; foreign residents who carry on a business or profession in Holland for not less than three consecutive months; foreign merchants who do business through agents in Holland; and foreign commercial travellers travelling in Holland. The assessment clauses are long and complicated, different types of profession being subjected to special treatment and special deductions; but, generally speaking, each profession pays on its net

annual profits. Elaborate provisions are made for the assessment of foreign income in the hands of representatives and intermediaries. The chief exemptions are the profits of charitable societies, foreign railway companies which do not pass within the Dutch frontier, provided that their governments extend the same exemption to Dutch railways, and diplomatic and consular agents who do not engage in a business or profession in Holland. The tax is graded and the rate varies in the different schedules, according as the person assessed has paid the property tax or not. For the person or company who is not liable to the property tax (the class includes most foreign companies with Dutch agencies), it varies from 1 florin on an income of 650 florins to a sum equal, in the case where an income exceeds 8,200 florins, to 148 florins, plus 3⅓ florins for each 100 florins of surplus. For those who have paid the property tax the rate runs from 2 florins on an income of 250 florins to 3⅓ florins for each 100 florins of surplus revenue above 8,200 florins, in cases where the property is more than 200,000 florins. Foreign residents travelling for business purposes in Holland pay at a fixed rate of 15 florins. All other classes are taxed at the rate of 2½ per cent. on their revenue. A temporary resident for three months, who is engaged in business, is charged on each three months' revenue, at the rate of 2 per cent., a deduction being first made of 150 florins. The mode of assessment in all cases is by declaration.

An individual who has part of his capital invested in companies does not pay property tax on such capital, since its revenue is already taxed in the hands of the companies by the professional tax. To avoid double taxation, in cases where an individual has invested his capital in his trade or profession, such capital is assessed on an assumed revenue of 4 per cent., and any profits beyond this figure are taxed under the professional tax.

The property tax yielded in 1900 about 7,400,000 florins

(620,000*l.*), and the tax on professions about 6,300,000 florins (525,000*l.*) (1).

The revenue systems of the smaller European States have no great fiscal or commercial importance. The one exception is to be found in the systems of the different Swiss cantons, which are full of interest to the student of revenue law, but have too little practical bearing on international trade to be dealt with here. The curious may find these set out in the work of M. Jobit (II. pp. 325—475).

THE UNITED STATES.

The staple tax of the United States is not on profits but on capital—a property tax which is not complementary, as in Prussia and Holland, to an income tax, but is itself the main instrument of taxation. The reason of this is very simple. The property taxes are State taxes, but an income tax is in its nature a national tax, and its local and provincial application is attended with grave difficulties (2). A national income tax was introduced during the Civil War, which in 1867 was fixed at 5 per cent., reduced in 1871 to 2½, and finally abandoned in 1873, when its special justification as an emergency measure had gone. In 1894, after a serious deficit in the Budget, an Act was passed reviving the tax for incomes over 800*l.* and fixing the rate at 2 per cent. But a decision of the Supreme Court declared the tax to be unconstitutional, and it was accordingly dropped without much chance of resurrection, save in the improbable event of a constitutional amendment (3). Foreign income in the

(1) The Dutch system is very complicated, and the analysis above is of the roughest description. For further details, see Jobit, II. pp. 168—227; Boissevain, Finanz Archiv, XI. pp. 419—682. For Belgium, see Jobit, I. pp. 165—213; Stévenart, Code fiscal, Brussels, 1888.

(2) See p. xxxv, *supra*.

(3) *Pollock* v. *Farmers' Loan and Investment Co.*, 157 U. S. 429; 158

United States, therefore, is not, and is not likely to be, subjected to a federal tax. The question of State income taxes has been much discussed, and, in spite of the disadvantage we have hinted at, they may yet be adopted in the place of the unpopular and unproductive property taxes (1).

To analyse the different forms of property tax in vogue in each of the States would be a lengthy and unnecessary task. The only point which concerns our inquiry is the way in which the tax affects the property of residents in other States or countries. Even this point belongs rather to the taxation of foreign capital, but in practice its result will have a certain correspondence with the results elsewhere produced by the taxation of income. The State property tax is not rated but apportioned, that is, the total amount is fixed and divided over the several counties of a State in proportion to their assessment, like the French *impôt foncier* and the English land tax. All real and personal property is taxed after an elaborate inquisition by revenue officers (2). As regards the taxation of the property of foreigners, the following principles have been established by decisions of the Courts.

(1) Personal property is taxable where it is actually situated and also where it is legally situated. Such legal situation has been held to be the domicile of the owner (3). This, of course, enables a State to tax the individual on all his property wherever situated, irrespective of whether it pays the

id. 601. For the history of this abortive tax, see Professor Dunbar's recently published Economic Essays, p. 116.

(1) See the Reports of the Tax Commissioners in the different States, and the works of Professors Ely and Seligman, *passim*. An income tax of 2 per cent. on incomes in excess of 200*l.* is at present levied in North Carolina. See Blue-book, c.d. 2587, p. 141.

(2) For an account of the methods and result of the tax, see Bastable, pp. 473—475.

(3) *Murray* v. *Charleston*, 96 U. S. 432; *Kirtland* v. *Hotchkiss*, 100 U. S. 491.

tax already in another State. Certain States have, therefore, exempted expressly a resident's personalty if permanently located and taxed in another State (1).

(2) For the purposes of taxation, a debt is situated at the domicile of the creditor. This rule applies to the debts of foreign governments, and to shares in a foreign company (2).

(3) For the purposes of taxation, a foreign corporation is generally held to be domiciled in the State of its creation; but a State may tax a foreign corporation which has an office and transacts part of its business within its borders, on its whole capital and business (3). In New York, however, such taxation has now been limited by statute to the portion of the capital employed in the State (4).

THE BRITISH EMPIRE.

AUSTRALIA.

The Commonwealth, while it has the power of making fiscal arrangements for common purposes, has not yet devised an income tax, but most of the separate States have adopted the expedient, and their revenue codes show many instructive variations, more akin, perhaps, to Continental than to English models.

New South Wales.

Income tax was imposed by the Law of 1896 upon all incomes in excess of 200*l.*, save incomes from land upon which land tax had already been paid. The rate is 6*d.*

(1) Alabama, California, Connecticut, Indiana, Louisiana, Maine, Missouri, New Jersey, Ohio, Rhode Island, South Carolina, Vermont, West Virginia, Illinois, Kansas, New York, North Carolina, and Ohio. See Seligman, Essays in Taxation, p. 112.

(2) *Kirtland* v. *Hotchkiss*, cited *supra*; *Bonaparte* v. *Tax Court*, 104 U. S. 592; *Sturges* v. *Carter*, 114 U. S. 511.

(3) *Horn Silver Mining Co.* v. *New York*, 143 U. S. 305; *People* v. *Campbell*, 138 N. Y. 543.

(4) See also the American notes in Dicey's Conflict of Laws, pp. 170—172, and notes on pp. 41, 43, *infra*.

in the pound. Public companies pay upon any income accruing to them, even if less than 200*l.*, and for the purpose of the tax their income is defined as the profits earned in New South Wales and accruing from investments within the State. The earnings of foreign companies and individuals are taxable, so far as locally originated; but the income of foreign investors from New South Wales Government Stock is specifically exempted from the tax.

Victoria.

Income tax was introduced in 1896, in an ingenious and highly complex system. Following a common Continental model, a distinction is made between incomes derived from labour and incomes derived from property. The first pay 3*d.* for every pound up to 300*l.*, 4*d.* per pound for the excess up to 800*l.*, 5*d.* for the excess up to 1,300*l.*, 6*d.* up to 1,800*l.*, and 7*d.* beyond. The second pay exactly double this rate. Incomes of individuals which do not exceed 150*l.* are exempt, but companies pay whatever their profits.

The income of a company is to be taken as the profits which it earns in Victoria. The assessable income of a life insurance company is 30 per cent. of the premiums received in the year prior to the year of assessment in respect of insurances in Victoria, but this provision does not extend to other forms of insurance company. The rate for all insurance companies is 12*d.* in the pound. Income from land is assumed to be 4 per cent. of its capital value. In the cases of trades where the profits are produced by both capital and labour, 4 per cent. of the net profits is assumed to be income from property and the balance from personal exertions. Shipowners whose principal place of business is outside the State pay 5 per cent. on their receipts from the carriage of Victorian passengers, goods, and mails. In the case of sales of property, where the vendor is not a resident, the taxable amount of income derived from such sales is assumed, unless

proof to the contrary is furnished, to be 5 per cent. of the total amount of the sale price.

The chief exemptions are in favour of insurance companies, other than life insurance, which take out an annual licence under the Stamp Act, mining companies, and the income of foreign investors from government or local public stock.

Queensland.

Income tax was introduced in 1902, in an Act whose operation was limited to three years. The system is divided into two parts: an ordinary income or profits tax and a dividend tax. The rate for the first is 10*s.* for incomes up to 100*l.*, 1*l.* for incomes up to 150*l.*, and above that sum 1*l.* on the first 150*l.*, and 6*d.* per pound on the excess if derived from personal exertions, and 1*s.* if derived from property. The exemptions are the income of mutual insurance companies, dividends which have paid the dividend tax, and the income of foreign residents from debentures, stock, or Treasury bills.

The dividend tax is at the rate of 1*s.* per pound on all dividends of companies having their head office or chief place of business in Queensland. In the case of foreign companies, the duty is proportionate to the average capital employed within the State. Insurance companies pay 20*s.* for every 100*l.* or part of 100*l.* of gross premiums received in the year previous to the year of assessment. Mining companies are allowed to make large deductions for repayment of capital, &c., before fixing their assessable income.

South Australia.

Incomes are divided, as in Victoria and Queensland, into those from personal exertions and those from property. The rate for the first is 4½*d.* per pound up to and including 800*l.*, and 7*d.* per pound for the excess. The second pay 9*d.* per pound up to and including 800*l.*, and 13½*d.* per pound for the excess. The first 150*l.* is exempted if the total

income does not exceed 400*l.* Land is assumed to yield an income equal to 5 per cent. of its capital value. A recent innovation is reported, by which the tax on the profits made by concert-singers, theatrical companies, and other persons resident in the colony only for a short time, is assessed and collected on a basis of weeks and even days.

Western Australia.

Here alone of the Australasian colonies we find no general income tax, but there is a partial substitute in the Companies Duty Act, passed in 1899 for three years, and permanently re-enacted in 1902. Under this statute 1*s.* per pound is charged on the profits of all companies, other than insurance companies. Life insurance companies are exempt; other insurance companies pay 1 per cent. on the gross premiums received.

Tasmania.

Income tax is levied at 1*s.* in the pound on the incomes of all companies, and on personal income derived from property; at 6*d.* in the pound on personal incomes from business and labour. The chief exemptions are as regards income accruing to foreign investors from Tasmanian Government Stock, income from land which pays land tax, income from dividends already brought into charge, and the income of persons who have not resided for six months in the State. Incomes up to 100*l.* are exempt, and deductions are allowed up to 400*l.*, save in the case of companies.

The assessment of local companies is based upon their declared dividends. In the case of companies whose head office is outside the State, a minimum income of 1,000*l.* is assumed, and the assessment is arranged as follows:—Banks pay on so much of their total dividends in the year preceding the year of assessment as is proportionate to their average assets in Tasmania during the same year; life insurance companies pay on 20 per cent. of the premiums received in

Tasmania, and all other insurance companies on 50 per cent.; shipping companies pay on 5 per cent. of their receipts from the carriage of goods, mails, and passengers from Tasmania to any port in and beyond the State; other companies pay on 5 per cent. of the turnover of business in Tasmania.

NEW ZEALAND.

New Zealand possesses an interesting and somewhat drastic income tax code. Incomes from land are assessed under a land tax. Other incomes pay 6*d.* per pound on the first 1,000*l.*, and 1*s.* per pound on the excess, but companies pay 1*s.* per pound on their whole income. Residents in New Zealand are allowed an exemption up to 300*l.*, but the privilege does not extend to absentees or foreigners. Banking companies pay 7*s.* 6*d.* per cent. of the average of their total liabilities and assets for the year prior to the year of assessment. Loan, investment, and building companies do not pay directly on their profits, but their shareholders are taxed personally upon the dividends received by them. Shippers and shipping companies are assessed upon their income from business in New Zealand and with foreign ports. When the head office is outside the colony, the New Zealand agent is liable to pay 5 per cent. of the receipts for the carriage of passengers, goods, and live stock, shipped to and from New Zealand ports. Insurance companies pay only on income derived from business carried on within the colony. A person not residing permanently in New Zealand, who offers goods for sale in the colony, must take out an annual licence of 50*l.* (1).

(1) For a summary of Australasian income tax system, see Coghlan, Statistical Account of Australia and New Zealand (11th issue), pp. 670—690. See also Journal of Society of Comparative Legislation (1903), pp. 361, 362.

CANADA.

The Canadian system is unique in the fact that it delegates the taxation of income to the smallest tax-levying unit, the municipality. There is no Federal income tax, and few of the provincial legislatures have anything of the sort, though income is frequently assessed indirectly by them in the shape of licences and corporation taxes.

Ontario.

This is the best instance of the Canadian system fully developed. The Assessment Act of 1892 (55 Vict. c. 48 (O.), Revised Statutes of Ontario, II. 2706) gave to the municipalities the right of assessing all real and personal property, including income. The chief exemptions were the pay of members of the Imperial army and navy; pensions of 200 dollars a year and under, payable by the Canadian government; incomes from personal exertion not exceeding 700 dollars, fees from other sources not exceeding 400 dollars, provided that no exemption was for a greater amount than 700 dollars; the income of a farmer from his farm, and of merchants, mechanics, and others from capital liable to assessment; and the rental from real estate. Income is to be construed as the income for the preceding year. With regard to foreign residents, it was provided that all personal property (including income) owned out of the province should be taxed in the hands of an agent or trustee, but the rule did not apply to dividends payable to a non-resident. Certain companies—banks, waterworks, harbours, &c.—were exempted from taxation on their profits as companies, though their shareholders paid on the dividends received from them. Municipalities were also given the power to levy as a substitute a business tax equal to 7½ per cent. of the annual value of the premises in which the business was carried on.

3 Edw. 7, c. 21 (O.), s. 3, raised the limit of exemption for incomes from personal exertion to 1,000 dollars. The follow-

ing year was passed the great Assessment Act (4 Edw. 7, c. 23 (O.)) which is now in force. It repealed practically all the earlier provisions. Income is defined by it very much as in the English Acts. It is provided that "all incomes derived either within or out of the province by any person resident therein, or received in the province by or on behalf of any person resident out of the same, shall be liable to taxation." (Sect. 5.) The principal exemptions are in favour of the pay of soldiers and sailors; the income of farmers; the rental of real estate; dividends from stock received by shareholders from a company which has already paid tax on its profits; income from personal exertion or from pensions granted for personal service up to 1,000 dollars if the recipient is resident in a city of not less than 10,000 inhabitants, and up to 700 dollars if a householder, and 400 dollars if not a householder, elsewhere. The former exemptions in respect of other income are abolished. Most professions and trades are assessed on the presumed value of the premises where the business is carried on; and, if so, with one exception there is no assessment on income or on dividends paid out. The exception arises in the case of professional men—barristers, doctors, engineers, &c.—who pay income tax on the sum by which their income exceeds the amount of their business assessment. Non-residents pay through resident agents or trustees.

Two other taxes may be mentioned, which, though not strictly levied on income, have considerable bearing on the profits of non-residents. 62 Vict. c. 8 (O.) imposes a tax on companies in the nature of a licence. A bank, for example, pays $\frac{1}{10}$ per cent. on its paid-up capital. A life insurance company, however, is taxed on income, paying 1 per cent., and other insurance companies $\frac{2}{3}$ per cent., of the gross premiums received during the previous year. Under sect. 2 (6), where the receipts from premiums of a life insurance company, whose head office is out of Ontario, are

less than 20,000 dollars, and where such company has invested on security in Ontario 100,000 dollars or more, such company pays a tax of 1 per cent. on its gross premiums, and ¼ per cent. on the income from its investments. 63 Vict. c. 6, s. 3, made the premiums "premiums on policies on the lives of persons resident in Ontario," and abolished the "investment on security" clause. An insurance company which pays the tax is not liable to pay to the municipality in which its head office is situated any municipal tax in respect of income derived from localities outside that municipality. Foreign companies pay through their resident managers or agents.

The other tax was established by 63 Vict. c. 24 (O.), which imposes a licence on new extra-provincial companies carrying on business in Ontario which do not pay tax under 62 Vict. c. 8, and which were founded for the purposes of gain. Buying and selling in Ontario by correspondence and the mere taking of orders do not constitute a carrying on of business so as to make a company liable. The fee is paid by the local agent, and runs from 25 dollars upwards, according to the capital and the nature of the company.

Quebec.

There is no tax in force in this province which can be said to deal with income, though, as regards the economic result to foreign corporations or individuals, there is an equivalent in the corporation tax and the licences on trades and professions. The only direct charge on income is that imposed by 58 Vict. c. 6 (Q.), which levies a rate of 1½ per cent. on all subsidies to railway companies paid by the Quebec government.

55 & 56 Vict. c. 15 (Q.) imposed a kind of poll tax upon members of liberal professions, which was consolidated by 57 Vict. c. 11 (Q.) with licences upon trades. Residents in Montreal or Quebec, following a profession, paid at the rate

of 5 per cent. upon the annual value of their office or place of business; those resident in any other town in the province paid an annual fee of 6 dollars, and those resident elsewhere in the province, 3 dollars. All members of the Executive Council and all public officials were liable to an income tax of 2½ per cent. upon their official salaries, provided that they were not less than 400 dollars. The tax was, however, repealed by 59 Vict. c. 16 (Q.).

Neither the Quebec Municipal Code (34 Vict. c. 65 (Q.)) nor any of the numerous amending Acts contains anything of the nature of an income tax.

The great tax to which foreign residents are subject is the corporation tax (51 & 52 Vict. c. 11, amended by 59 Vict. c. 15, 63 Vict. c. 13, and 3 Edw. 7, c. 19). The chief exemptions are in favour of newspaper companies and certain kinds of agricultural corporations. It is, in substance, a tax upon capital. The ordinary company pays $\frac{1}{10}$ per cent. upon its paid-up capital up to 1,000,000 dollars, and 25 dollars for each additional 100,000 dollars. An extra charge of 50 dollars is made for every office or agency in Montreal or Quebec, and of 20 dollars for those elsewhere in the province. The Lieutenant-Governor has power to reduce the tax to an extent proportionate to the business done by the company in the province, in the case of companies which have their head offices elsewhere, provided the amount paid is not less than $\frac{1}{10}$ per cent. of the capital employed in the province. Banks, loan and investment companies, railway companies, &c., are assessed on similar lines to Ontario, and foreign corporations of all sorts are assessed through their resident agents. Insurance and express companies may be taken as the type of such special assessments. A life insurance company pays 1 per cent., and other insurance companies (except marine) $\frac{2}{3}$ per cent. on the amount received or due from premiums on insurances effected within the province during the preceding year, a minimum being fixed of 250 dollars;

marine insurance companies simply pay a fixed levy of 250 dollars. Foreign fire insurance companies, which have no agents in Quebec and do not pay the tax in any other capacity, are assessed at the rate of 3 per cent. on the gross premiums received for policies effected during the preceding year in Quebec. In this case it would appear that the assured is held responsible for the tax. Express companies, with their seat outside the province, but carrying on operations within it, pay $\frac{1}{10}$ per cent. on their capital up to 1,000,000 dollars, 25 dollars for each extra 100,000 dollars, and an additional tax of 50 dollars for each office or agency in Quebec or Montreal, and of 20 dollars for every office elsewhere in the province.

Manitoba.

In this province the direct taxation is mainly municipal, but there is no specific charge on income. The Municipal Code (Revised Statutes of Manitoba, II. 1313) assesses both real and personal property; but only capital. The main exemptions are in favour of agricultural stock and produce, and ships, vessels, and shares therein. (See 1 Edw. 7, c. 27.) The chief municipal tax is the business tax (56 Vict. c. 24 (M.); 59 Vict. c. 16 (M.)), which is levied on the rental value of business premises. Certain types of corporation, however, are assessed in arbitrary sums. Gas and electric light companies, for example, pay on 60,000 dollars, telephone companies on 30,000 dollars, waterworks on 150,000 dollars. The rate is generally 10 per cent., but artisans whose stock is not over 200 dollars in value pay $6\frac{2}{3}$ per cent., and retail merchants $8\frac{1}{3}$ per cent. The business tax takes the place of the assessment on personal property, and its details are varied in different municipalities by special Acts and Charters.

Foreign corporations are also subject to a corporation tax on their capital, framed according to the usual Canadian model,

and before they can do business in the province they are required to pay certain licence dues.

British Columbia.

We find here a highly developed revenue system which has the peculiarity among Canadian types of being almost exclusively administered by the provincial and not the municipal authorities. The two great taxes which may affect foreign income are the income tax and the property tax. A third levy, which is called the revenue tax, is in substance a poll tax of 3 dollars, which is paid by all male inhabitants, except militiamen and men over 60 years of age, whose income does not exceed 700 dollars. (See Revised Statutes (1897), c. 167; 1 Edw. 7, c. 46; 3 & 4 Edw. 7, c. 45.)

The income and property taxes were imposed by one statute. All real and personal property is assessed, and personal property is so read as to include income. In the latest Act income is thus defined: "The amount earned, derived, accrued or received from any source whatsoever, the product of capital, labour, industry or skill . . . and shall include and mean . . . all wages, salaries, emoluments and annuities, accrued or due for any purpose whatsoever, and all income, revenue, rent or interest accrued or due from bonds, notes, stock, shares of stock, debentures (including interest or dividends from the stock, bonds or debentures of the province, or of any municipality of the province), and from real and personal property, and from interest on money lent, deposited or invested, and from all indebtedness secured by deed, mortgage, contract or agreement, and from all ventures, business, professions, offices, avocations or employments of any kind whatsoever."

Personal property and the income derived from it are to be assessed at the same time, and the tax paid on whichever is the greater. The chief exemptions are the pay of soldiers and sailors; pensions payable out of Imperial or Canadian

funds; property, real and personal, situated outside British Columbia; the stipends of clergymen; incomes up to 1,000 dollars; income of a farmer from his land; income from business, provided that the stock-in-trade is already assessed; certain British Columbian corporations, confined in their operations to that province, to the extent of half the rate on their gross revenue, but only in the event of their operating expenses exceeding 50 per cent. of their gross revenue in any year.

Income pays under three classes. In Class A., which includes incomes from 1,000 to 10,000 dollars, the rate is $1\frac{1}{3}$ per cent. up to 5,000 dollars and $2\frac{1}{3}$ per cent. on the remainder; in Class B. (10,000 dollars to 20,000 dollars), $2\frac{1}{3}$ per cent. up to 10,000, and 3 per cent. on the remainder; in Class C. (20,000 dollars and upwards), 3 per cent. up to 20,000, and $3\frac{1}{3}$ per cent. on the rest. Certain types of corporations have a special assessment. Banks, for example, pay as to personal property only on that from which no revenue is derived, and on income they pay $2\frac{1}{3}$ per cent. if under 10,000 dollars, 3 per cent. up to 20,000, and $3\frac{1}{3}$ beyond. Insurance companies pay on their gross revenue and not on their income in the strict sense.

The agents and trustees of non-residents are held responsible for the tax. (See Revised Statutes (1897), c. 179; 64 Vict. c. 38; 1 Edw. 7, c. 56; 3 & 4 Edw. 7, c. 53.)

Railway and mining companies are exempt, their profits being taxed by special Acts. The former pay as on real estate, each mile of track being valued at 10,000 dollars; the latter pay 1 per cent. on the value of the minerals won in the province. (See Revised Statutes, c. 180; 3 Edw. 7, c. 24; 3 & 4 Edw. 7, c. 52.)

Nova Scotia.

The revenue system is framed on the same lines as that of Ontario, income being charged under the municipal tax. The main exemptions are incomes up to 400 dollars per

annum in municipalities and 600 dollars in incorporated towns, and incomes derived from provincial, municipal, and town debentures which enjoy statutory exemption or are already taxed as property. (See Revised Statutes (1900), I. pp. 619 *et seq.*)

A poll tax is also levied, varying from 30 cents to 5 dollars in towns and municipalities. (See also 3 Edw. 7, c. 46.)

New Brunswick.

The ordinary Canadian system is in force in this province. Income is reached by taxes levied by the municipalities, under the powers given them by their special Acts. A good instance is the Act providing for the assessment of the city of Moncton (60 Vict. c. 44). Here the chief exemptions are pensions from Imperial funds; the pay of soldiers and sailors; a farmer's income from his land; income from personal exertion up to 300 dollars; income from real estate otherwise assessed. Non-residents are assessed either in their own names or through their agents. Companies are assessed as such, and shareholders are consequently exempt on any dividends received by them.

The city of St. John has power to exempt from certain taxes the property of companies establishing a new industry where there is not then existing in the city any similar or competing industry (60 Vict. c. 55). No person visiting any city or district for a temporary purpose, even though such purpose be connected with business, is liable to assessment on personal property or income (61 Vict. c. 30). Insurance agents do not pay income tax, but a fixed fee varying from 25 to 100 dollars (55 Vict. c. 5; 59 Vict. c. 34; 63 Vict. c. 43).

There is also the usual Canadian tax on the capital of companies. Fire insurance companies, for example, pay 1 per cent. on their net premiums, and those whose head offices are outside New Brunswick pay in addition a fee of

100 dollars. Other insurance companies pay a fixed charge of 250 dollars, but if their head offices are in New Brunswick the charge is reduced to 100 dollars. Banks are taxed according as their headquarters are in St. John, or elsewhere in New Brunswick, or outside the province (55 Vict. c. 4).

Prince Edward Island.

Here also we have the common Canadian type. The income tax was imposed by 57 Vict. c. 2, and was levied at the rate of 1 per cent. on all profits received by residents, whatever the origin of such profits, and on all profits received by non-residents from a Prince Edward Island source. The chief exemptions are incomes not exceeding 350 dollars derived from personal exertion, and the incomes of farmers from land; 5 per cent. discount is allowed for cash payment. The latest Act has raised the rate of charge from 1 to 1½ per cent. (See also 60 Vict. c. 14; 63 Vict. c. 5; 2 Edw. 7, c. 5.)

Specific taxes are also imposed on certain companies. Local fire insurance companies, for example, pay 75 dollars, and foreign fire insurance companies 150 dollars; banks pay fees varying from 500 to 1,000 dollars; common carriers, whose principal office and organisation are foreign, pay 100 dollars. (See 57 Vict. c. 3; 62 Vict. c. 18; 63 Vict. c. 6; 2 Edw. 7, c. 6.)

Licences are also imposed on certain classes of trades. Commercial travellers, for example, pay an annual fee of 20 dollars, and, if their business deals with wines and spirits, of 200 dollars. Travelling insurance agents, not resident in the province, pay 100 dollars. (See 57 Vict. c. 4; 62 Vict. c. 20; 1 Edw. 7, c. 10.)

Newfoundland.

This colony gives no material for our inquiry. There is a municipal charge on companies (cf. St. John's Municipal Act (55 Vict. c. 4)), but income is not taxed in any form by any provincial or municipal tax.

SOUTH AFRICA.

The South African colonies have only one specimen of income tax, though the taxation of gold profits in the Transvaal proceeds on an analogous system. This was imposed in Cape Colony by the Additional Taxation Act, No. 36 of 1904, which followed the Australian rather than the English model. All residents and non-residents are taxed on all profits received "from any source within the colony." This provision, we may note, excludes income accruing to residents from foreign sources, which is presumably a large proportion of the total. Non-residents are taxed through their agents or trustees. A resident company is considered as an agent for absent shareholders, and is empowered to deduct the tax from their dividends. Companies are allowed no deduction on their profits, but in the case of individuals the first 1,000*l.* of income is exempt. The rate is 6*d.* per pound from 1,000*l.* to 2,000*l.*, 9*d.* per pound on the excess up to 5,000*l.*, and 1*s.* per pound on any further income.

The chief exemptions are income accruing to foreign residents from government or municipal debentures, inscribed stock and Treasury bills of the colony, and the pay of soldiers and sailors stationed at the Cape. A foreign principal who sells goods in the colony by means of an agent is, in the absence of an account of sales, assessed on an amount equal to 5 per cent. of the total amount received from such sales. A foreign owner or charterer of ships is assessed to tax on 5 per cent. of the amount received in respect of passengers, live stock, mails, and goods shipped at the Cape. Insurance companies are assessed on that part of their income deemed to be earned in the colony, and other companies on that part of their income which stands to the whole as their assets in the colony stand to their total assets.

The Transvaal possesses a tax on the profits of gold mining

which was imposed by the Governor's Proclamation (No. 34) of 5th June, 1902, in place of the old 5 per cent. tax of the Boer Government. The rate is 10 per cent., and it is levied on the "annual net produce obtained from the working of claims, mynpachts, and other gold-bearing properties situated in the colony; such net produce shall be taken to be the value of the gold produced after deduction therefrom of the cost of production and of such sums as may be allowed in respect of the exhaustion of capital." Allowances for exhaustion of capital are defined as "such sum as if paid by way of annuity from the date of the commencement of production (or from the date of the expenditure of the capital if such expenditure took place subsequent to such commencement) for the whole period during which the property is estimated to continue to be workable would at 3 per cent. compound interest produce an amount equal to the amount of such capital." The officials of a company are required to make all necessary returns of profits, and the Treasury may call for any confirmatory evidence it thinks needful. Failing such returns, the Treasury may make an arbitrary assessment on its own account.

The tax is a lucrative one and is not felt as a grievance, but it is probable that its place will be taken in time by a general tax on property, combined, in all likelihood, with some form of income tax [1].

INDIA.

India exhibits an income tax system which is more interesting historically than in its actual workings. Such a tax in India is a just tax and a lucrative one, but it is unpopular both with foreign residents and the richer natives. At the same time, it is to be hoped that it will form a permanent part of the revenue code, for it is the only tax which can

[1] See the present writer's African Colony, pp. 223—235.

reach the richer classes in a country where wealth has a knack of secreting itself, and gives often no visible sign of its presence. The only objection to it is that, so far as the natives are concerned, assessment must be by inquisition, a method which demands a constant espionage by minor officials.

The first Indian income tax, that of 1860 (1), was the work of Mr. James Wilson, the Financial Member of Council, and was imposed to raise the additional revenue required for the reorganisation of the country after the Mutiny. It was closely framed on the English Act of 1842, and contained the substance of its five schedules. Rule 1 of Schedule II. provided that "profits made in respect of any trade or adventure carried on entirely out of India, and which shall be in no way connected either with the products of India exported therefrom, or with any manufactures or products whatever purchased out of India and imported or to be imported into India, shall be exempted from any charge under this Act, unless such profits are received in India." Roughly speaking, foreign income was taxed as under the English Acts—Indian residents paying on all income from foreign sources transmitted to them in India, and foreign residents on all profits accruing from Indian sources. The English six months' rule was applied to temporary residents, and the exemptions generally followed the English Acts. The rate was 4 per cent., or about $9\frac{1}{3}d.$ per pound on all incomes above 500 rupees, and half that rate on incomes below. As compared with subsequent legislation, the Act may seem a little over-complex, but there is reason to believe that it worked well during its five years' life. It expired in 1865, and income remained untaxed for four years, until the passing of Act IX. of 1869. This followed a cruder and simpler method, taxing income in three classes—salaries and

[1] Act XXXII. of 1860; Fagan's Indian Acts, III. pp. 100 *et seq.*

pensions, profits of companies, and income from all other sources. The rate in the first two classes was 1 per cent., and the last class paid a graded duty. Income accruing from Indian sources to a non-resident was charged in the hands of his agent. The rate was raised by Act XXIII. of 1869, and the subsequent Acts XVI. of 1870 and XII. of 1871 embodied the same method. Act VIII. of 1872 introduced a new schedule for dividends from government securities. This last Act was repealed in 1873, and for some time income was left untaxed.

The famines of the later 'seventies called into being a number of trade and professional taxes—really income tax in another form—and higher rates for the land revenue. Act II. of 1886 restored the income tax in the form in which it exists to-day. It imposed the tax on all income from sources other than agriculture, income from the ownership of land being already assessed to the land tax. Income was defined by sect. 3 as "income and profits accruing and arising or received in British India." The main exemptions were (1) the profits of a shipping company incorporated or registered out of British India, and having its principal place of business out of British India, and its ships ordinarily engaged in sea-going traffic out of Indian waters; (2) the pay of soldiers, both of the Imperial and Indian armies, not in civil employ, which does not reach 500 rupees per month; (3) incomes from all sources less than 500 rupees per annum. Assessment is by inquisition and declaration. Non-residents are charged in the names of their agents (sect. 21), and a company which has several places of business under the same or different local governments may declare which is its principal place of business for the purpose of the tax (sect. 47).

The Schedules follow the Act of 1869 rather than that of 1860. Schedule A. is the equivalent of the English Schedule E. Under it all salaries, pensions, &c., paid to any person resident in British India, or serving on board a ship

plying to and from British Indian ports, and all salaries, &c., paid out of Government funds to officials in an Indian protected State, are taxed at the rate of 5 pies in the rupee, or about $6\frac{1}{4}d.$ in the pound, if amounting to 2,000 rupees or upwards, and at the rate of 4 pies in the rupee if below 2,000 rupees. Under Schedule B. the net profits earned by all companies in British India for the preceding year pay 5 pies in the rupee. Schedule C. corresponds to the English Schedule C. The rate is 5 pies in the rupee, and is levied on interest from securities, including all promissory notes, stock, &c., of the Government of India, bonds or debentures charged by the Imperial Government on Indian funds, and the debentures of local authorities and companies. Schedule D. covers all other profits, and the rate is levied on a graded scale. Incomes from 500 rupees to 750 rupees pay a fixed sum of 10 rupees; those from 1,750 rupees to 2,000 rupees, 42 rupees; and those above 2,000 rupees, the ordinary rate of 5 pies in the rupee. Incomes below 500 rupees (about 33*l.*) are exempt. An Amending Act (XI. of 1903) raised the limit of exemption to 1,000 rupees, or 66*l.*, and the scale therefore begins with incomes of from 1,000 to 1,250 rupees, which pay 20 rupees.

It will be seen that the Indian income tax levies contributions on foreign income much on the same principle as the English system. A company or an individual may therefore pay tax twice on the same profits—once in England and once in India. *Universal Life Assurance Society* v. *Bishop* [1] furnishes such an instance, and the *Calcutta Jute Mills* v. *Nicholson* [2] would have given us another, had not the Indian tax been in abeyance at the time it was decided [3].

[1] See p. 12, *infra*.

[2] See p. 34, *infra*.

[3] For the Indian tax, see the various Acts cited above, and Sir John Strachey's India, pp. 170—172.

Part I.

INCOME OF RESIDENTS IN THE UNITED KINGDOM DERIVED FROM FOREIGN SOURCES.

CHAPTER I.

INCOME FROM FOREIGN (1) PUBLIC STOCK.

Duty payable.

1. Duty is payable in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable in the United Kingdom to any person, body politic or corporate, company or society, whether corporate or not corporate, out of any foreign public revenue.

Sect. 88 of 5 & 6 Vict. c. 35, and sect. 2, Schedule C., of 16 & 17 Vict. c. 34 (2).

The principle which was laid down by sects. 29 and 96 of 5 & 6 Vict. c. 35, and the so-called Foreign Dividends Act (5 & 6 Vict. c. 80, s. 2), has been repeated and amplified in 48 & 49 Vict. c. 51, s. 26, and 51 & 52 Vict. c. 8, s. 24 (2).

"In the United Kingdom." Wherever dividends from foreign public stock are paid through agencies in this

(1) Throughout the book, "foreign" includes "Indian" and "Colonial," and refers to all lands beyond the bounds of the United Kingdom.

(2) For the sake of brevity the two great Income Tax Acts (5 & 6 Vict. c. 35, and 16 & 17 Vict. c. 34) are generally referred to in these notes as the "Act of 1842" and the "Act of 1853."

country, then they are taxed under Schedule C., as provided in this rule. But many forms of foreign public stock have no British agencies, and their dividends are paid abroad—such as French *Rentes* and some kinds of Italian securities. In that case their dividends are profits from foreign securities, and are taxed under Case IV. of Schedule D. (See Chapter II.)

Mode of assessment and collection.

2. Such duty is payable by way of deduction, being secured to the revenue in the hands of those whose business it is to pay the income, who, in their turn, deduct the amount of duty before distribution.

5 & 6 Vict. c. 35, s. 29, entrusts the duty of charging such dividends to the Commissioners for special purposes, commonly called the Special Commissioners, so far as it is not specifically provided for otherwise. Sect. 24 of the same Act makes the governor and directors of the Bank of England Commissioners for assessing the duties on all annuities, interest, dividends, &c. payable by them. (Cf. also sects. 89, 93 and 94.) Sect. 11 of the Act of 1853, replacing sects. 90—92 of the Act of 1842, makes the governor and directors of the Bank of Ireland Commissioners for assessing the duties on annuities, dividends, &c. payable by the Bank. By sect. 27 of the Act of 1842, the directors of the East India Company were made Commissioners for assessing duties on the interest, dividends, annuities, &c. paid by them, and this provision still applies to such dividends as are paid through the India Office as the successors of the company. (Cf. also sect. 97 of the same Act and the India Stock Certificate Act, s. 10 (26 & 27 Vict. c. 73).)

Sect. 96 of the Act of 1842 requires the agents responsible for such income to deliver to Somerset House a list of the dividend receivers and annuitants, with their addresses and the amounts payable to each, on which the Commissioners are to frame their assessments.

5 & 6 Vict. c. 80, s. 2, repeats these provisions, and empowers such agents to pay the duty assessed direct to the revenue and deduct it from the moneys in their hands.

29 & 30 Vict. c. 36, s. 9, extends the above provisions "to the assessing and charging of the income tax on all such dividends and shares of annuities, and interest, dividends and other annual payments, where the right or title of the person to whom the same may be payable is shown by the registration or entry of the name of such person in any book or list ordinarily kept in the United Kingdom." The person ordinarily in charge of such book is to be deemed the person entrusted with the payment of the dividends.

48 & 49 Vict. c. 51, s. 26, enlarged the definition in the older Acts of persons entrusted with the payment of dividends so as to include—

"(a) Any banker or person acting as a banker who shall sell or otherwise realise coupons or warrants for or bills of exchange purporting to be drawn or made in payment of any dividends (save such as are payable in the United Kingdom only), and pay over the proceeds to any person or carry the same to his account.

"(b) Any person who shall, by means of coupons received from any other person, or otherwise on his behalf, obtain payments of any dividends elsewhere than in the United Kingdom.

"(c) Any dealer in coupons who shall purchase coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons."

This Act also granted remuneration of not less than 3*d.* in the pound on the amount of duty paid to the agent performing the work, the exact amount to be fixed by the Treasury.

51 & 52 Vict. c. 8, s. 24 (2), ordains that the words "coupons" and "coupons for any dividends" in sub-

sects. (b) and (c) above should be read so as to include "warrants for or bills of exchange purporting to be drawn or made in payment of any dividends."

Exception in case of small dividends.

3. Small annuities, dividends, and shares, of which the half-yearly payment does not amount to fifty shillings, are not subject to assessment under Schedule C., but are to be accounted for and charged under the third case of Schedule D., which provides for the taxation of profits of an uncertain annual value.

5 & 6 Vict. c. 35, s. 95. See also sect. 100, Schedule D.

CHAPTER II.

INCOME FROM FOREIGN SECURITIES.

Duty payable.

4. All profits from capital invested in foreign securities (a), which are received (b) in the United Kingdom (c), are taxable without deduction or abatement (d).

The charging sections are 5 & 6 Vict. c. 35, s. 100, and 16 & 17 Vict. c. 34, s. 2. The duties are assessed under Case IV. of Schedule D.

The class of income dealt with under the rule is what may be called "safe" profits. It is a tax on capital securely invested, and therefore it is a high tax, being levied on the whole receipts for the year of assessment and not on any average of years. In this case capital is not assumed to be risked as in foreign "possessions" in the strict sense (see Chapter III.), nor are profits assumed to be variable, as in the case of a foreign trade or profession. (See Chapter IV.) It is a levy on capital which has a fixed and certain increment; the receipts are to be regarded not as profits in the ordinary sense, but as interest upon secured investments. At the same time, it is the case in which "receipt in the United Kingdom" must be most strictly construed. It is a tax upon the interest of investments which is enjoyed by the owner in this country, but it is not intended to penalise generally investment in foreign securities, and interest which is not received here or only received "constructively" does not fall under the rule.

The question has arisen whether the Revenue, in cases where several alternative modes of taxation are possible, has a free election as to the method to be pursued. In

Scottish Mortgage Co. of New Mexico v. *McKelvie* (1886), 24 Sc. L. R. 82; 2 Tax Cases, 165, where profits were taxed under Case IV. of Schedule D., the Court held that the Crown, if it pleased, might have charged them under Case I., but that it had the right to choose which case it preferred (at pp. 172, 176). In *Smiles* v. *Northern Investment Co. of New Zealand* (1887), 24 Sc. L. R. 530; 2 Tax Cases, 177, the right of the Revenue authorities was very clearly laid down in the judgment of the Lord President, explaining some sentences in his judgment in the case last quoted:—

"The income in respect of which duty is to be charged may fall under more than one description in the statute, and in that case it would, of course, be in the option of the Commissioners of Inland Revenue to take the case in the most favourable view for themselves. Now no more was meant here than to say that it would be in the option of the Surveyor to take the case which was most favourable to the Crown, because the Commissioners of Inland Revenue, of whom I am speaking there, is the Board in London—the Board that is charged with the collection of revenue, and not the Commissioners from whom this appeal is taken." Local Commissioners, therefore, have no authority to decide which case shall be selected as against the representations of Somerset House.

In *Smiles* v. *Australasian Mortgage Co.* (1888), 25 Sc. L. R. 645; 2 Tax Cases, 367, it was contended by the Crown that "a species of profit or gain appropriately set forth in the statute by its true specific denomination as chargeable in a particular way, under a particular rule, could not properly be classed under another and more general designation, in order to bring it under the operation of another rule regulating the assessment of a different description of profit." This proposition was not controverted by the Court, the basis of their decision being that the profit in question did not, as a matter of fact, fall within the more specific case. In *Norwich Union Fire Insurance Co.* v. *Magee* (1896), 44 W. R. 384; 73 L. T.

733; 3 Tax Cases, 457, Wright, J., said: "The Scotch case of McKelvie has been referred to as an authority for saying that the Crown may elect under which case it will tax the subject. I doubt if it is an authority for that proposition to the full extent. It is no doubt an authority for the proposition that if a particular company is clearly within Case IV., the Crown may tax it under Case IV., even though it may also be under Case I., but I doubt whether it is an authority for the counter proposition altogether. I doubt whether the Crown could always elect to tax under Case I. if the company were clearly under Case IV." The doubts of Wright, J., seem to be based on the ground that Case IV. is the more specific case, as also the more favourable to the Crown. It is difficult to see how this extension of the principle *expressum facit cessare tacitum* can apply to a case where the Crown itself makes choice as to the right which it desires to enforce. It is an established rule of law that a statute made for the benefit of the Crown shall be construed in the sense most beneficial to it. (*Reniger* v. *Fogossa*, Plowd. Com. 10; Comyns' Digest, tit. Parl. (R. 21); Hardcastle on Statutory Law, 3rd ed. p. 384.) But this is a rule binding on the Courts which interpret the statutes, and not on the Crown which benefits by them.

(a) "**Foreign Securities.**"

Securities may be either moveable or immoveable. (*Smiles* v. *Australasian Mortgage Co.*, at p. 378, cited *supra.*)

Shares in a company are not securities, but portions of capital. (Wright, J., in *Bartholomay Brewing Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, at p. 222.)

The ordinary definition of "security," such as that given in the Stamp Act of 1891, ss. 82 and 122, does not apply here. We must have recourse to the wider definition as "anything which makes money more assured in its payment." To this must be added "and on which

profits accrue." A cheque is a security in the former sense, but not in the latter. If we define it, then, as a secured investment on which profits accrue, it will comprise all moneys lent on the security of realty or personalty, including the different forms of mortgage and bill of sale, and all moneys invested in the debentures of companies. Certain secured profits, such as royalties and land charges, are probably more properly classed as "possessions," and taxable under Case V. (Cf. Chapter III.)

(b) "**Received.**"

See notes to Rule VI.

(c) "**United Kingdom.**"

Originally Great Britain. Amended by the Act of 1853, sect. 5.

(d) "**Without Deduction or Abatement.**"

The duty is to be computed "on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in the current year, without deduction or abatement." (Act of 1842, sect. 100, Schedule D., Case IV.)

Some confusion in the interpretation of these words was created by the practice followed in *Scottish Mortgage Co. of New Mexico* v. *McKelvie*, cited *supra*. The company in question raised capital in this country and invested it in foreign securities which paid a higher rate of interest. In the year of assessment no profits were sent home, though they had been ascertained abroad; but the company used a portion of its capital, which had not been invested, equivalent to the amount of profits, for the purposes of paying dividends to its shareholders. The Court held that the sum was assessable under Case IV. as being in substance profits from foreign securities received in this country. But the Revenue in arriving at the sum to be assessed took the actual profits which were retained abroad and from them deducted the expenses of both the American

and the home management. It is difficult to see on what principle this was done. The American expenses were perhaps legitimate, since if actual transmission had taken place they would have been deducted first, but the assessment is on the whole amount received in this country, and no deduction is allowed for home expenses in making and managing the investments. All deduction to be allowable must be made before the money leaves the foreign shore. If a merchant has large private investments abroad of which the profits are remitted to him, he is taxable on the whole, and is not allowed to deduct the cost of the secretarial work required to manage his speculations. The point is, however, of small importance now, for the difficulty is only serious in cases of "constructive remission," and that doctrine has been so narrowed as to be almost negligible.

5. Investment in foreign securities does not include the fluctuating advances which arise in ordinary trading transactions.

Ordinary trading advances not included.

Smiles v. *Australasian Mortgage Co.* (1886), 25 Sc. L. R. 645; 2 Tax Cases, 367. In this case the company was an ordinary trading company, part of its business being the loaning of money on security to its clients. Its chief business was wool-broking, and incidentally it advanced money to its customers on the security of their goods, receiving a commission for its agency. The Court held that the company was purely a trading company, and that its advances were not investments of money, but the fluctuating advances of a commission agent on the security of goods in his hands at the time. (Cf. the Lord President's judgment, 2 Tax Cases, at p. 376.) On the facts it was held to be impossible to distinguish one part of the business from another. Investment was held to be something quite distinct from the use of money in ordinary trading transactions. (Cf. per Lord Shand, *ibid.* p. 378.)

Receipt must be actual, not constructive.

6. The receipt of such profits in the United Kingdom must be actual and not merely constructive, though it will be construed as an actual receipt if part of the capital of a company, which would naturally be transmitted to a foreign country for investment there, is used in this country for dividends and other outlays to avoid the transmission home of the profits earned abroad.

This section can scarcely be called a rule of law, at least in its latter clauses. The first sentence represents the rule, and the remainder is used to cover one particular exception, the occurrence of which is too remote a possibility to raise it to the rank of a general principle. The doctrine of "constructive remission" is now for all practical purposes a myth. It originated in the case of the *Scottish Mortgage Co.* v. *McKelvie* (1886), 24 Sc. L. R. 82; 2 Tax Cases, 165. (For summary of facts, cf. p. 8.) The Court held that the sum taken from the capital retained in this country, in lieu of foreign profits which were not transmitted, was to be considered for taxing purposes as the profits of foreign securities. (Cf. also *Smiles* v. *Northern Investment Co. of New Zealand* (1887), 24 Sc. L. R. 530; 2 Tax Cases, 177.)

In *Bartholomay Brewing Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 213, where the assessment was decided under Case V. of Schedule D., Wright, J., said: "If the 4th Case were applicable, those dividends ought, in point of law, to be regarded as received in England. For reasons of convenience the money is not sent over, but it forms part of the profit dealt with and divided by the company here; and the effect of what is done is that a debt due and payable in England to the foreign shareholder is discharged by the money retained in America. That, I think, is equivalent to the receipt of the money here." In *San Paulo Railway* v. *Carter*, (1896) A. C. 31;

44 W. R. 336; 3 Tax Cases, 407, it was laid down by the Court that the principle of "constructive remission" referred only to Case IV. and not to Case V. (Cf. also *Nobel Dynamite Trust* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 224; and *Denver Hotel Co.* v. *Andrews* (1895), 43 W. R. 339; 3 Tax Cases, 356.)

In *Forbes* v. *Scottish Widows Fund and Life Assurance Society* and *Forbes* v. *Scottish Provident Institution*, (1895) 33 Sc. L. R. 228; 3 Tax Cases, 443, the profits of colonial investments were not remitted to England, but retained to meet colonial expenses or re-invested in colonial securities. It was argued for the Crown (a) that such profits were taxable under Case I. (this point was given up on the facts, but would probably, so far as the law is concerned, nowadays be decided in favour of the Crown); (b) that such profits were taxable as general annual interest under sect. 102 of the Act of 1842. The point was not seriously pressed, and is one of the few instances in revenue law of an attempt to read an executive provision as a charging section; (c) that such profits were taxable under Case IV. as having been constructively remitted. The case was decided against the Crown on the facts, and there are some important *dicta* on "constructive remission" which, if adhered to, would have kept that doctrine within reasonable limits. (Cf. the Lord President's *dictum*, 3 Tax Cases, p. 456. "It is a phrase which requires to be carefully guarded. As employed in the present argument, it would obliterate the limitation in the rule of Case IV. Every man and every company having foreign or colonial investments of course knows of the interest arising from them, takes note of it, and enters it in any statement of affairs which may require to be made up. But this will never make interest 'received in the United Kingdom.' The New Mexico case (*Scottish Mortgage Co.* v. *McKelvie*) was quite different. The money there could only be said not to have been received, if money sent home by bill is not received in this country, or if no colonial interests are received in

the United Kingdom which do not reach it in specific form.")

In *Norwich Union Fire Insurance Co.* v. *Magee* (1896), 44 W. R. 384; 73 L. T. 733; 3 Tax Cases, 457, an English company had business agencies abroad through which it earned profits. The interest on securities held in America was not remitted to this country, but re-invested there in order to build up a reserve fund as required by American law. It was held that such interest was part of the general trading profits of the company, and so assessable under Case I. With regard to Case IV., Wright, J., said (3 Tax Cases, p. 461): "In effect it seems to me that the 5,000*l.* is received in this country because, owing to the exigencies of American law, this money would have to be sent out from here if it were not otherwise provided; and, if it can be otherwise provided, and so relieves the funds of the company in this country from being despatched from this side, it is a mere matter of convenience, which does not appear to me in any way to alter the nature or character of the moneys for the purpose of investment." In *Universal Life Assurance Society* v. *Bishop* (1899), 68 L. J. Q. B. 962; 4 Tax Cases, 139, an English life insurance company had branches in India and funds invested in Indian securities. The interest of such securities was retained in India and applied to Indian expenses. It was treated in the company's books as part of the divisible profits upon which dividends were paid, though never transmitted home *in forma specifica*. If it had not been retained in India, a sum of equal amount would have had to be sent out from England. In these circumstances the Court held that the interest was constructively received in this country and assessable under Case IV. The grounds on which judgment was given show signs of a weakening of the rigid doctrine which had hitherto been laid down. "Constructive remission" was in substance narrowed down to sums which were treated in the accounts as received in England. The interest in this case was received abroad as profits to

be applied in the ordinary way to the expenses and dividends of the company, and therefore, although not actually transmitted home, it fell under a different category from profits, which, as in the *Forbes case*, cited above, were merely re-invested, and not passed through the mill of the company's business.

The first case which shook the doctrine of "constructive remission" was *Gresham Life Assurance Society* v. *Bishop*, (1901) 1 Q. B. 153; (1902) A. C. 287. A life insurance company carried on business at home and abroad, and the interest on foreign investments was received abroad by the agents of the company, and partially applied to the management expenses of the company there. All such interest was brought into account in the books in England for the purpose of the balance sheet upon which the profits were ascertained. It was contended for the Crown that such interest was taxable under Case IV., but the House of Lords unanimously decided against the contention. The doctrine of "constructive remission" was thus overthrown for all practical purposes. *McKelvie's case* was distinguished, but *Universal Life Assurance* v. *Bishop* and Mr. Justice Wright's *obiter dicta* in *Norwich Union* v. *Magee* were overruled, as well as the scattered *dicta* in other cases on the same subject. *Standard Life Assurance Co.* v. *Allan*, (1901) 38 Sc. L. R. 628, completed the work which the *Gresham* decision began. Interest derived from the foreign and colonial investments of an insurance company was not remitted home, but retained in the country where it was earned, and re-invested or otherwise applied there. It was entered in the company's books and taken account of in the estimate of profits made before the declaration of a bonus. The Crown argued—and it was an argument not without weight—that foreign interest, if re-invested abroad, was not assessable, as in the *Forbes case*, but otherwise if used for working expenses of the company abroad, because, if it was not so used, money would have to be sent out from England for the purpose. The Court, however, held that

in this case the interest was not constructively received in this country so as to be chargeable with duty under Case IV.; and, as the case had been a favourable one for the Crown to test its contention in, with this decision the doctrine of "constructive remission" may be said to disappear from our law.

The doctrine, while capable of a sufficiently logical defence, was wholly alien to the accepted canons of construction applicable to Revenue Acts. (See Introduction, p. xxxiv.) The statutes required an actual receipt, and though it is unnecessary to take too narrow a view of what actuality means, yet it is an integral part of the conception. To be received in England profits need not be sent in bullion—a bill or a cheque transferring cash from one account to another at home is ample. The money need never have been out of England, though the earning transactions which give the money its character as profits must take place abroad. The central point is that the receipt must mean an actual accretion to the profits of the company or individual, and not merely the prevention of a disbursement. There must be a *positive* use of such funds as profits, and not merely the avoidance of a further despatch of money from home. Capital used, as in the *McKelvie's case*, for the purpose of dividends gives us such a positive use; the saving of further transmissions abroad by the use of foreign profits for foreign working expenses does not.

Cf. also *St. Louis Breweries* v. *Apthorpe* (1898), 79 L. T. 551; 4 Tax Cases, 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co.* (1899), 80 L. T. 395; 4 Tax Cases, 41.

Receipts will be presumed to be interest.

7. If money is received in the United Kingdom in connection with investments in foreign securities, it will be presumed to be interest unless the contrary can be shown.

This is the gist of the decision in *Scottish Provident Institution* v. *Allan*, (1901) 38 Sc. L. R. 683; 4 Tax

Cases, 409. A Scottish mutual insurance society, being assessed on certain Australian remittances, disputed liability on the ground that such sums were not sent in payment of interest but in repayment of capital. It was held by the Court that—

(a) Money, clearly ear-marked as repayment of capital, is not assessable;

(b) If a company lends money abroad and has its capital, when repaid, transmitted to this country, the total amount of such remittances will be charged under Case IV. if capital is inextricably mixed up with interest;

(c) If the total amount invested abroad, even after the remittances, exceeds the amount originally sent out, it will be presumed that such remittances were made out of interest and they will be taxed accordingly.

Method of collection.

8. The duty chargeable on such profits is payable by way of deduction (a) in cases where there is an accredited agent or receiver of such profits before distribution. In such a case it is assessed by the Special Commissioners or their equivalent. Where the assessment is on the recipient himself or his personal agents it is made by the Commissioners for the ports (b) of London, Bristol, Liverpool and Glasgow, the place of assessment being determined in each case by the locality of importation of such profits or the residence of the person to whom they are payable.

(a) "Payable by way of Deduction."

16 & 17 Vict. c. 34, s. 10, extended the provisions of 5 & 6 Vict. c. 80, s. 2 (see p. 3), to "all interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, or shares of any foreign

company, society, adventure, concern, or in respect of any securities given by or on account of any such company."

24 & 25 Vict. c. 91, s. 36, extended the provision to the case of a colonial company.

29 & 30 Vict. c. 36, s. 9, extended the provision to all cases where the name of the person entitled to payment is registered in the United Kingdom.

31 & 32 Vict. c. 28, s. 5, included "all annuities, pensions, or other annual sums payable out of the funds of any institution in India, entrusted to any person in the United Kingdom for payment to any persons resident in the United Kingdom."

Cf. also 48 & 49 Vict. c. 51, s. 26, and 51 & 52 Vict. c. 8, s. 24 (2). (See p. 3.)

"Special commissioners" under Schedule C. (See notes to Chapter I.)

"Or their equivalent"—the Bank of England, Bank of Ireland, or India Office. (See note to Rule II.)

(b) "**Commissioners for the Ports.**"

This part of the rule is still good law, but it is rarely put into practice. It was found so inconvenient in working that the practice arose of assessing all who were not assessed through an agent or receiver at *their place of residence* and by means of the ordinary additional commissioners of Schedule D. In practice, the Commissioners of the Ports only assess those who live actually within the limits of the ports.

5 & 6 Vict. c. 35, s. 108, provides:—

"The duty to be assessed by virtue of the Act in respect of the profits or gains arising from foreign possessions or foreign securities, or in the British plantations in America, or in any other of her Majesty's dominions, may be stated to and assessed by the respective Commissioners acting for the respective places hereinafter mentioned, *videlicet*, London, Bristol, Liverpool and Glasgow, according to the regulations hereinafter mentioned, as if such duty had been assessed upon the profits or gains arising from trade

or manufactures carried on in such places respectively; and such duty shall be stated to and assessed and charged by the Commissioners acting for such of the said places at or nearest to which such property shall have been first imported into Great Britain (now the United Kingdom), or at or nearest to which the person who shall have received such remittances, money or value from thence, and arising from property not imported as aforesaid, shall reside; and in default of the owner or proprietor thereof being charged, the trustees, agent or receiver of such profits or gains shall be charged for the same, and shall be answerable for the doing all such acts, matters, and things as shall be required by this Act to be done, in order to the assessing such profits to the duties granted by the Act, and paying the same, whether the person to whom the said profits belong shall be resident in Great Britain (United Kingdom) or not. Provided always, that whenever the produce or the profits or gains arising from such possessions or securities as last aforesaid shall have been imported partly into the Port of London, and partly into any of the outports of Bristol, Liverpool or Glasgow, or shall have been received by any person partly in the City of London and partly in any of the said outports, within the period of maturing of the account on which the duty is chargeable by the Act according to the rules herein contained, the whole of the duty chargeable in respect of such produce, profits or gains so imported or received, shall be assessed and charged by the Commissioners acting for the said City of London, and not elsewhere, and as if the whole of the said produce or the said profits or gains arising within the said period had been imported into or received in London, and whenever such produce or profits or gains arising as aforesaid shall have been within such period wholly imported into or received at two or more of such outports, the duty chargeable thereon shall be assessed and charged at one of such places only, and in one account, and at such of the said places at which the major part in value of such produce or profits

or gains shall have been so imported or received, provided that the statements of such produce, profits or gains, shall be delivered to the Commissioners acting for each place at which any part of the said produce or profits or gains shall have been so imported or received, and transmitted by the respective Commissioners to the head office for stamps and taxes in England; and the Commissioners of Stamps and Taxes (now Commissioners of Inland Revenue) shall cause all such statements to be sent to the Commissioners acting for the place where the duty thereon shall appear by such statements to be chargeable according to this Act, who shall accordingly assess the same in one sum."

For interest or annual payments "charged on any foreign property or foreign security," which is not otherwise charged, see 5 & 6 Vict. c. 35, s. 102. Cf. also the Act of 1853, sect. 2 (Schedule D.), and sect. 40.

CHAPTER III.

INCOME FROM FOREIGN POSSESSIONS.

9. All profits from foreign possessions (a) which are received (b) in the United Kingdom (c) are taxable without deduction or abatement (d). Duty payable.

The charging sections are 5 & 6 Vict. c. 37, s. 100, and 16 & 17 Vict. c. 34, s. 2. The duties are assessed under Case V. of Schedule D.

The profits taxed under this rule are those from "foreign possessions," using the word in its widest sense, which are not liable under any of the other cases. They include the profits transmitted home from trades and professions carried on *wholly* abroad, from lands and other forms of real estate, and from company stock. Like Case IV. (see Chapter II.), the case deals with foreign investments, but only such as are unsecured; and, like Case I. (see Chapter IV.), with foreign businesses, but only with those which are not managed from home, and the earnings of which, though in no way attributable to British management, are received in whole or in part in the United Kingdom. It may be said to comprise two classes of profits:—

(a) From property abroad of which the income or some part of the income is received at home;

(b) From trades or professions carried on abroad, which are not managed from home, and of which the income or some part of the income is received at home.

The rule is simple because the subject-matter is simple, and judicial decisions have introduced no subtleties into its interpretation.

"Foreign Possessions."

Case V. runs as follows: "Fifth case. The duty to be charged in respect of possessions in the British plantations in America, or in any other of her Majesty's dominions out of the United Kingdom, and foreign possessions."

The duty to be charged in respect thereof is to be computed on a sum not less than the full amount of the actual sum annually received in the United Kingdom, either—

(a) for remittances from thence payable in the United Kingdom; or

(b) from property imported from thence into the United Kingdom; or

(c) from money or value received in the United Kingdom, and arising from property which shall not have been imported into the United Kingdom; or

(d) from money or value so received on credit or on account in respect of such remittances, property, money, or value, brought or to be brought into the United Kingdom.

The effect of this comprehensive provision is to subject to the tax all profits of foreign property, whether in the shape of money or goods, which are brought to these shores.

The meaning of "profits" is governed by the general rule laid down for the interpretation of income under Schedule D. (See pp. 50—56, *infra*.)

(a) **"Possessions"**

is a very wide word, and includes every conceivable form of property. A company which earns profits abroad is not a "foreign possession" if it is really managed from or resides in England. (*Calcutta Jute Mill Co.* v. *Nicholson* (1876), 1 Ex. D. 437; 1 Tax Cases, 83; *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; 1 Tax Cases, 88; *Imperial Continental Gas Association* v. *Nicholson* (1877), 37 L. T. (N. S.) 717; 1 Tax Cases, 138.)

A sleeping partner of a firm which carries on business wholly abroad is assessable, under Case V., on the profits actually remitted to him in this country. (*Colquhoun* v. *Brooks* (1889), 14 A. C. 493; 2 Tax Cases, 490. Per Lord Herschell (p. 502): "The rule styled the Fifth Case . . . . deals with the duty to be charged in respect of possessions in any of her Majesty's dominions out of Great Britain and foreign possessions. Now the word 'possessions' is not used in the part of the Schedule D. which describes the subjects of the tax, and, speaking generally, they are defined to be the profits arising from property and those arising from trades and professions. When, therefore, the term 'possessions' is employed, it seems to indicate an intention to cover by it something more than 'property.' And it is difficult to see why, unless the intention was to embrace something more, the latter word was not used. 'Possessions' is a wide expression. It is not a word with any technical meaning; the Act supplies no interpretation of it; and I cannot see why it may not fitly be interpreted as relating to all that is possessed in her Majesty's dominions out of the United Kingdom or in foreign countries. And if so, I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere." Cf. also per Lord Macnaghten, p. 506 *et seq.* See also the following cases, most of which were, or would now be, decided under Case I.: *London Bank of Mexico* v. *Apthorpe*, (1891) 2 Q. B. 378; 3 Tax Cases, 143; *Denver Hotel Co.* v. *Andrews* (1895), 11 T. L. R. 238; 43 W. R. 339; 3 Tax Cases, 356; *San Paulo* (*Brazilian*) *Rail. Co.* v. *Carter*, (1896) A. C. 31; 3 Tax Cases, 407; *Grove* v. *Elliots and Parkinson*, *Elliots and Parkinson* v. *Grove* (1896), 3 Tax Cases, 481; *The Frank Jones Brewing Co.* v. *Apthorpe* (1898), 15 T. L. R. 113; 4 Tax Cases, 6.)

Shares in a foreign company are foreign possessions within the meaning of Case V., provided that such investments are not the business of a company managed from

home, and provided also that the foreign company is not under the control of the English investor. In both of these latter instances the profits would be the profits of a trade carried on in this country, and assessable under Case I. (See pp. 36, 45—47, *infra; Nobel Dynamite Trust Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 224; *Bartholomay Brewing Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 213 (these cases may now be considered as over-ruled on the facts); *United States Brewing Co.* v. *Apthorpe* (1898), 4 Tax Cases, 17; *St. Louis Breweries* v. *Apthorpe* (1898), 79 L. T. 551; 4 Tax Cases, 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co.* (1899), 80 L. T. 395; 4 Tax Cases, 41.)

See, further, notes in Chapter IV. pp. 29—57, *infra.*

(b) "**Received.**"

The receipt must be actual. The doctrine of "constructive remission" has never been applied to Case V. (Per Vaughan Williams, J., *Denver Hotel Co.* v. *Andrews* (1895), 43 W. R. at p. 110; cf. also per Wright, J., *Bartholomay Brewing Co.* v. *Wyatt*, cited *supra*, at p. 223.)

(c) "**United Kingdom.**"

Originally "Great Britain." Amended by the Act of 1853, sect. 5.

(d) "**Without Deduction or Abatement.**"

All sums received in this country in respect of foreign possessions are to be brought into charge, and considered net profits, save for such provisions in mitigation of the rule as apply to Case I. (Cf. Rule XII. *seq.*; also pp. 50—57, *infra.*)

Certain profits were received by trustees in the United Kingdom from trust properties situated in India. After deducting management expenses, the trustees distributed the net trust income among the beneficiaries. It was held that the gross amount received in this country was liable to income tax, without any deduction for expenses

in the management of the trust. (*Aikin* v. *Macdonald's Trustees*, (1894) 32 Sc. L. R. 85; 3 Tax Cases, 306. Per Lord McLaren at p. 309: "I think it is plain enough that the only kind of deductions allowed is expenditure incurred in earning the profits, and that there is no deduction under any circumstances allowable for expenditure incurred in managing profits.")

Case of foreign insurance companies.

10. In the case of foreign insurance companies, where there are no shareholders, but only members holding participating policies, bonuses added to the policies or returned to members are not profits within the meaning of this rule. If, however, some part of the bonuses available for such division is applied to the payment of interest on shares, the whole bonuses rank as profits.

The cases under this rule will generally fall under Case V., though, as in *New York Insurance Co.* v. *Styles* (1889), 14 A. C. 381; 2 Tax Cases, 460, the question may be raised under Case I. with regard to the profits of a foreign company trading in England, rather than to the profits of an English resident derived from a foreign company trading abroad.

In *Last* v. *London Assurance Corporation* (1885), 10 A. C. 438; 55 L. J. Q. B. 92; 53 L. T. 634; 34 W. R. 233; 2 Tax Cases, 122, the assurance company was a proprietary office, the company and its shareholders being a body quite distinct in interest from the assured. A member of the company could effect an insurance with it, but that circumstance did not touch his right as a partner. The company issued "participating policies" to all persons, whether shareholders or not, at increased premiums, and undertook to pay back by way of bonus or abatement of premiums two-thirds of any surplus funds applicable to such policies. It was argued for the Crown that the two-thirds surplus was not a debt to be deducted from receipts

in ascertaining trading profits, but was itself a part of the profits; and the contention was upheld in the House of Lords by Lords Blackburn and Fitzgerald (Lord Bramwell dissenting).

In *New York Life Insurance Co.* v. *Styles* (1889), 14 A. C. 381; 2 Tax Cases, 460, the insurance company had no members other than the holders of participating policies, to whom all its assets belonged. At the close of each year the surplus was divided between the participating policy-holders, who received their dividends either in the shape of a cash reduction from future premiums or of a reversionary addition to the amount of their policies. The surplus arose partly from the excess of premiums paid by the policy-holders over and above the cost of their insurances, and partly from profits arising from non-participating policies, the sale of life annuities, and other business conducted by the company with non-members. It was held by the House of Lords (Lords Watson, Bramwell, Herschell and Macnaghten; Lord Halsbury, L. C., and Lord Fitzgerald dissenting) that such surplus funds returned or credited to its members were not profits assessable to income tax. In order to be profits for income tax purposes, the surplus must be the result of what has been received from outsiders; so long as it is the mere excess of contributions there is no liability. If a surplus is created because the company allows a margin in the contributions exacted and collects more than it requires, that surplus of contributions over actual cost is not income for the purpose of the Income Tax Acts. *Last* v. *London Assurance Corporation* (cited *supra*) was distinguished on the ground that in that case the company and the assured were separate bodies without community of rights and interests.

In *Equitable Life Assurance Society of United States* v. *Bishop*, (1900) 1 Q. B. 177; 4 Tax Cases, 147, the company, an American one, was required by the laws of the State of New York to have a share capital of 100,000 dollars invested in securities. Its shareholders

were entitled by its charter to receive a dividend not exceeding 7 per cent. per annum. The earnings of the company, over and above the dividends, losses and expenses, were to be accumulated, and divided every five years among the participating policy-holders. The company granted non-participating as well as participating policies, and did other business, the profits from all sources going to form the surplus. It was held that the case was covered by *Last* v. *London Assurance Corporation* (cited *supra*); that the company was not a Mutual Insurance Company within the meaning of *Styles* v. *New York Life Insurance Co.* (cited *supra*); and that the surplus accumulated was not the property of the policy-holders, but represented accumulated profits, liable to assessment as profits.

It is on this decision that the rule given above is based. The fact that the excess contributions were lumped together with the other profits and applied to the payment of the 7 per cent. dividend as well as the bonus divided among the participating policy-holders vitiated the character of such excess contributions. Such is the law; but it is a little difficult to follow the logic of the decision. It would perhaps be a truer view to regard only the part of the surplus allocated to the payment of the interest on the shares as "profits" assessable to the tax, and to hold the part of the surplus attributable to the excess contribution of the policy-holders exempt under the rule in the *New York Insurance Company* case. The company had a dual character, being on one side an investment company and on the other a mutual assurance society. There seems to be no reason why revenue law in such a case should not distinguish the two functions and the two types of income derived from them. It may be added that in practice Somerset House does not tax the individual on a bonus received from a foreign insurance company. Apart from policy, the procedure may be justified on the ground that it may well be doubted whether it is "*annual* income."

The basis of the exemption to participating policy-holders in a mutual assurance society is probably that the surplus derived from excess premiums is to be regarded rather as capital than as income, a view which seems to have been indicated in the case of *Nicholson* v. *Nicholson*, 9 W. R. 677.

Case of foreign company with English branch.

11. If a foreign company has a branch in this country which earns profits, then the dividends, transmitted to the United Kingdom and taxed under Case V. as the profits of foreign possessions, should be reduced in assessment by the amount attributable to British earnings, which have already paid tax as profits of a business carried on in this country.

This rule is obscure at first sight, but it is in reality a simple provision against double taxation. If a foreign company has an agency in London which earns profits, then the agency is taxable under Case I. of Schedule D. on the profits it makes, and also under Case V. on the dividends which it pays to shareholders in England; but clearly a deduction must be made, proportionate to that part of the dividends which come from already taxed English profits. It is of no consequence whether the English dividends are remitted from abroad or retained out of the English profits. (*Gilbertson* v. *Fergusson* (1881), 7 Q. B. D. 562; 1 Tax Cases, 501.)

The principle is clear if we take a concrete instance. There is a company A. in Paris, which has a branch B. in London. B. makes 1,000*l.* in profits, A. makes a total net profit of 4,000*l.* The total of 4,000*l.* goes to produce the dividend, 800*l.* of which is remitted to B. for distribution among English shareholders, or, as the case may be, is retained by B. out of its own profits. B. pays (a) income tax on 1,000*l.* under Case I. of Schedule D., (b) income tax under Case V., on such portion of the

dividends paid in England as is not attributable to the profits earned in England. We should therefore have to divide 800*l.* in the proportion of 4,000*l.* to 1,000*l.*, which would give us a balance of 600*l.* as the amount assessable under Case V. Or, to put it algebraically: Let $X =$ the total profit of the company, $x =$ the profits made in England, and $y =$ the dividend distributed in England, then the sum assessed under Case V. would be $\frac{X-x}{X} y = y - \frac{x}{X} y$.

Mode of assessment.

12. The duty chargeable on such profits is to be computed on the full amount of the actual sums annually received in the United Kingdom, an average being taken (a) for the three preceding years, as in Case I. of Schedule D. No deduction or abatement (b) is allowed save as provided for in Case I. The duty is payable by way of deduction (c) in cases where there is an accredited agent or receiver of such profits before distribution. In such cases it is assessed by the Special Commissioners or their equivalent. When the assessment is on the recipient himself or his personal agents it is made by the Commissioners for the Ports (d) of London, Bristol, Liverpool and Glasgow, the place of assessment being determined in each case by the locality of importation of such profits or by the residence of the person to whom they are payable.

5 & 6 Vict. c. 35, s. 100, Case V.

(a) **"An Average being taken, &c."**

This is the method employed in Cases I. and II., and is, indeed, the normal method of Schedule D., save in Case IV., where the fact that the income is secured is

assumed to render it less variable, and therefore a proper subject of full annual taxation. For the rules employed in such assessment by average, see the Act of 1842, sect. 100, Cases I. and II., and the rules attached, and pp. 49, 50.

(b) "**Deduction or Abatement.**"

See note to Rule XXI., p. 51, *infra*.

(c) "**Payable by Way of Deduction.**"

See pp. 15, 16, *supra*.

(d) "**Commissioners for the Ports.**"

See notes on Rule VIII., *supra*.

CHAPTER IV.

INCOME FROM TRADES AND PROFESSIONS CARRIED ON ABROAD.

13. All profits (a) from trades (b) and professions (c) situated (d) abroad and carried on by individuals or corporations (e) resident (f) in the United Kingdom are taxable whether remitted (g) to the United Kingdom or not. Duty payable.

The charging sections are 5 & 6 Vict. c. 35, s. 100; Cases I. and II.; and 16 & 17 Vict. c. 34, s. 2, Sched. D.

The profits dealt with under this rule are the profits of trades or professions which the law regards as British concerns, in spite of the fact that the exercise of the profit-earning activity may be mainly or wholly located abroad. The rule deals with the taxation of the entire profits of a business, and not merely that part which may be remitted to this country.

(a) "**Profits.**"

See Rules XX. and XXI., *infra.*

(b) "**Trades.**"

The words of the statute are "any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act." This is an exhaustive definition, and embraces every form of profit-making under any conceivable business save such as may be included under the term "professions." The profits derived by a corporation from renewing fines, market fees, metages, &c., are trade profits. (*Att.-Gen.* v. *Scott* (1873), 28 L. T. (N. S.) 302; 1 Tax Cases, 55.) So, also,

are those of a burial board carrying on business under Act of Parliament for the benefit of the ratepayers (*Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 2 Tax Cases, 46); of investment and insurance companies; of hospitals receiving paying patients (*St. Andrew's Hospital, Northampton* v. *Shearsmith* (1887), 19 Q. B. D. 624; 2 Tax Cases, 219); of profit-earning charities (*The Trustees of Psalms and Hymns* v. *Whitwell* (1890), 7 T. L. R. 164; 3 Tax Cases, 7); and of companies or trustees engaged in realising assets. (*Armitage* v. *Moore*, (1900) 2 Q. B. 363; 4 Tax Cases, 199; and, probably, *Assets Co.* v. *Forbes*, (1897) 34 Sc. L. R. 486; 3 Tax Cases, 542.) Cf. the *dictum* of Coleridge, C. J.: "It is not essential to the carrying on of trade that the people carrying it on should make a profit, nor is it even necessary that they should desire or wish to make a profit." (*Commissioners of Inland Revenue* v. *Incorporated Council of Law Reporting* (1888), 22 Q. B. D. 291; 3 Tax Cases, at p. 113.)

(c) "**Professions.**"

The words of the statute are "Professions, employments, or vocations, not contained in any other schedule of the Act." This is also an exhaustive definition, "vocation" meaning the way in which a person passes his life. (Dowell, 5th ed. p. 150.) A professional bookmaker exercises a calling within the meaning of the Act. (*Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276; 2 Tax Cases, 179.) A famous surgeon who receives fees for attending patients in different parts of Europe, and a bookmaker who visits French race-meetings, are instances of British residents who make profits from the exercise of their professions abroad.

(d) "**Situated.**"

That is, the material conditions of the trade are foreign. A gold mine, for example, is *situated* in West Australia,

though the fact that its owner directs its exploitation from England makes it a trade "partly carried on" in England.

(e) **"Individuals or Corporations."**

See Rules XIV. and XIX., *infra*. Rule 2 of Case I. lays down that the duty "shall extend to every person, body politic or corporate, fraternity or fellowship, company or society, and to any art, mystery, adventure, or concern carried on by them respectively."

(f) **"Resident in the United Kingdom."**

See notes on Rules XIV. and xvii, *infra*.

(g) **"Remitted to the United Kingdom."**

See notes on Rule XIV., *infra*.

14. An individual resident (a) in the United Kingdom, who exercises a trade or profession partly within and partly without the United Kingdom, is assessable on the whole of his profits.

Case of resident individual.

Act of 1853, sect. 2, Schedule D., makes liable to taxation "the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere."

The natural meaning of the provision would appear to be that any British resident is liable on all the profits of a trade or profession, even though such trade or profession be exclusively carried on abroad. In *Lloyd* v. *Sulley* (1884), 21 Sc. L. R. 482; 2 Tax Cases, 37, the proprietor of a Scottish estate resided there with his family for nearly four months during the year of assessment. His business was situated in Leghorn, where he had a residence, and he had no place of business in the United

Kingdom. While residing in Scotland he directed business affairs in Leghorn through his manager. The Court held that he was a person residing in the United Kingdom within the meaning of Schedule D., and therefore assessable on the whole profits of the Leghorn business. This case is still law; but in view of the decision in *Colquhoun* v. *Brooks* (see notes to Rules XV. and XVI.), the determining fact must be held to be the exercise of the function of management from the Scottish residence, by which the Leghorn business was constituted "a business partly within and partly without the United Kingdom."

(a) "**Resident in the United Kingdom.**"

"Residence" is one of the words most difficult of definition in English law; indeed, it is impossible to define it absolutely, since it bears a different meaning for the purposes of different statutes. (Cf. Erle, C. J., *Naef* v. *Mutter*, 31 L. J. C. P. 357.) The only definition which covers all applications is "a locality containing something in the nature of a house, building, or other shelter, where a person has spent, and spends, or intends to spend, some portion of his time." It is not to be confused with "domicile"; a man can have but one domicile, but he may have many residences. Moreover, the domicile of an infant may be in a country which he has never visited, whereas residence implies personal presence in the locality in question at some period or other. (*Walcot* v. *Botfield* (1854), Kay, 534.) A man's place of business may be his residence. (*Att.-Gen.* v. *McLean* (1863), 1 H. & C. 750 (a case under the House Tax Act of 1803); cf. Pollock, C. B. (p. 761): "The word 'reside' does not necessarily mean 'dwell'"; *Hewer* v. *Cox*, 30 L. J. Q. B. 73; *Blackwell* v. *England*, 27 L. J. Q. B. 124; 8 E. & B. 541; *Attenborough* v. *Thompson*, 27 L. J. Ex. 23; 2 H. & N. 559; cf. also *Re Bowie, ex parte Breull*, 50 L. J. Ch. 385; 16 Ch. D. 484 (a case under the Bankruptcy Act of 1869); *Yardley* v. *Jones*, 4 Dowl. 45; *Ablett* v. *Basham*,

25 L. J. Q. B. 239; 5 E. & B. 1019 (cases under the Common Law Procedure Act of 1852).)

The better and more modern view of residence, however, is in favour of regarding the term as implying some kind of dwelling-house or home. "The word 'residence' denotes a place where an individual eats, drinks and sleeps, or where his family and his servants eat, drink and sleep." (Bayley, J., *R.* v. *North Curry*, 4 B. & C. 959; cf. also sect. 95 of the Bankruptcy Act, 1883; *R.* v. *Norwood*, L. R. 2 Q. B. 457; *Re Oldham*, 1 O'M. & H. 158 (per Blackburn, J.: "A man's residence is where he habitually sleeps"); *Barlow* v. *Smith* (1892), 9 T. L. R. 57.)

To constitute residence it is not necessary that a person should spend much time in the place where he resides. A sailor is liable to be taxed as a British resident, though he is absent from his home the greater part or the whole of the year of assessment. (*In re Young* (1875), 12 Sc. L. R. 602; 1 Tax Cases, 57; *Rogers* v. *Inland Revenue* (1879), 16 Sc. L. R. 682; 1 Tax Cases, 225; cf. *contra*, *Turnbull* v. *Solicitor of Inland Revenue*, (1904) 42 Sc. L. R. 15.) A person domiciled in Ireland, where he also resided, purchased a furnished house in London and lived in it for ten weeks. He then returned to Ireland, leaving only a caretaker behind him. The Court held him to be resident in England, so as not to be within the exception in sect. 51 of 46 Geo. 3, c. 65 (corresponding to sect. 39 of the Act of 1842). (*Att.-Gen.* v. *Coote* (1817), 4 Price, 183.) An American citizen took a shooting in Scotland for three years, and resided there for about two months in each year. He was held to be a person residing within the United Kingdom within the meaning of the rule. (*Cooper* v. *Cadwalader*, (1904) 12 Sc. L. T. R. 449. Per the Lord President: "He has in effect a lease of heritage in Scotland; he occupies personally the subjects let to him for a considerable portion of each year, and when he is abroad in America these subjects are kept in readiness for his return. His occupation of the subjects is not of a casual or temporary

character, but is substantial and, as regards some of its incidents, it is continuous.")

For the case of foreigners visiting this country for a temporary purpose, see sect. 39 of the Act of 1842, pp. 79—80, *infra*.

Very little would therefore seem to be required to establish the fact of residence for the individual. But one condition must be present to constitute a house or a locality a man's residence: He must have been there, and have the intention of returning or be in the way of going with sufficient frequency to constitute a practice. But he need not go every year, and he need not stay long. In the case of one who is not a native, we may lay down with some certainty another rule: He must have something in the nature of an establishment there, so that it is reasonably ready for his occupation at any time.

Case of resident individual continued.

15. An individual resident in the United Kingdom who exercises a trade or profession situated wholly without the United Kingdom is assessable on the whole of his profits, if he exercises any control, however slight, over the management.

Lloyd v. *Sulley* (1884), 21 Sc. L. R. 482; 2 Tax Cases, 37.

As already pointed out, the words of the statute taken in the ordinary sense seem to authorise the taxation of all foreign profits, provided the owner of the business is resident in the United Kingdom, whether or not the whole or any part of such profits is transmitted to this country, and whether or not the owner is in actual control of the business. This was the principle upheld in the cases of *Calcutta Jute Mills* v. *Nicholson* (1876), 1 Ex. D. 437; 1 Tax Cases, 83; *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; 1 Tax Cases, 88; *Imperial Continental Gas Association* v. *Nicholson* (1877), 37 L. T. 717; 1 Tax Cases, 138. In *Colquhoun* v. *Brooks* (1889), 14 A. C.

493; 2 Tax Cases, 490, Mr. Brooks, who resided in England, was a partner in a firm which carried on business solely in Australia. The larger part of his share in the firm's profit was invested for him in Australia; the balance was remitted to him in England, and on the balance he paid income tax under Case V. of Schedule D. Mr. Brooks admittedly took no active part in the management of the Australian firm. It was contended for the Revenue that, as a British resident carrying on a foreign business, he was liable on all his profits, whether remitted to this country or not. The case was decided for the Crown in the lower Courts and against the Crown in the Court of Appeal, in both cases with several judges dissenting. In the House of Lords, after a full argument, it was decided against the Crown, principally on equitable considerations, and on the ground that there was no existing machinery which would enable the unremitted portion of the foreign profits to be adequately assessed.

The principle thus established is, that a business carried on wholly abroad is, although owned by a British resident, assessable only on such profits as are remitted home. It has been the task of subsequent decisions to emphasize the word "wholly," and to limit the application of the judgment to cases where there has been absolutely no home control. The principle of the decision holds good, but not, it is submitted, the equitable and methodical arguments used by the House of Lords in arriving at it. The distinguishing fact in the case is that the British resident did not *carry on* the foreign trade; it stood to him rather in the relation of an investment or possession. (See pp. 20—22, *supra*.)

The rule in *Colquhoun* v. *Brooks* applies strictly to the case of a foreign business owned and carried on by an individual. It is in connection, however, with trades carried on by a corporation that it has been chiefly discussed. As we shall see later (p. 39 *et seq.*), the two classes of cases are on different footings, the home management or residence of a corporation requiring a much

stricter and more elaborate definition than the management and residence of an individual. But whatever has been said by the Courts in restriction and explanation of *Colquhoun* v. *Brooks* with reference to corporations applies *à fortiori* to individuals.

In *London Bank of Mexico and South America* v. *Apthorpe*, (1891) 2 Q. B. 378; 3 Tax Cases, 143, an English company, registered in England and with its head office in London, carried on a banking business in various foreign cities. No banking business was done in London except the London business of the foreign branches, but shareholders' and directors' meetings were held at the London office. It was held that the whole operations of the company must be considered as one business; that the business was, in fact, carried on in England, and that the total profits of the company were therefore taxable under Case I. of Schedule D. *Colquhoun* v. *Brooks* was distinguished as a case in which there were two separate businesses, one of which was carried on wholly outside the United Kingdom. (Cf. *Bartholomay Brewing Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 213; and *Nobel Dynamite Trust Co.* v. *Wyatt*, (1893) 2 Q. B. 499; 3 Tax Cases, 224.) In both of these cases a resident English company earned profits abroad by means of capital invested in the shares of foreign companies. In both cases the *business* of the companies was such investment, and the business was carried on from home. On the analogy of *Colquhoun* v. *Brooks* the unremitted foreign profits were held not liable to taxation; but, in view of later decisions, this analogy must be held to be a false one, and the two cases on this point over-ruled.

The first case which clearly re-established the principle laid down in the cases prior to *Colquhoun* v. *Brooks* was *Denver Hotel Co.* v. *Andrews* (1895), 11 T. L. R. 238; 43 W. R. 339; 3 Tax Cases, 356. The company was registered in England, and had an English head office and English directors. All questions of principle were referred by the American manager to the English board. The

books were kept and the dividends declared in England, dividends payable to English shareholders being paid in London and to American shareholders at Denver. The company was held assessable on the whole of its profits as a business resident and carried on in England.

In *Norwich Union Fire Assurance Company* v. *Magee* (1896), 73 L. T. 733; 44 W. R. 384; 3 Tax Cases, 457, an English insurance company with a business in America had certain sums invested in American securities, from which interest was received. Such interest appeared in the English books of the company as profit, but was not remitted home, being re-invested in American securities as part of the reserve fund required by the law of the United States. It was held that such investments were part of the trade carried on in the United Kingdom, and that the interest constituted profits assessable under Case I. of Schedule D.

The principle of *Colquhoun* v. *Brooks* was finally fixed and limited by the *San Paulo (Brazilian) Rail. Co.* v. *Carter*, (1896) A. C. 31; 3 Tax Cases, 407. In this case the company was registered in England with an English office and directorate. All books were kept, meetings held, and dividends declared in London. The work in Brazil was superintended by a manager appointed by the directors. The company was held assessable on its total profits, as resident and carrying on business in England. Per Lord Watson, 3 Tax Cases, at p. 411: "In my opinion, the decision in *Colquhoun* v. *Brooks* directly affirms the rule that every interest in the profits of trade belonging to a person who is within the meaning of the Act resident in the United Kingdom must be charged under the First Case of Schedule D., if the trade is carried on either wholly or partly within Great Britain or Ireland, and is chargeable under the Fifth Case, if the trade is exclusively carried on in any of her Majesty's dominions out of the United Kingdom. . . . . A person cannot, according to the rule established in *Colquhoun* v. *Brooks*, escape from liability under the First Case, unless he is

able to show that no part of the trade is carried on within the United Kingdom, or, what comes to precisely the same thing, that it is exclusively carried on in a country or countries outside the United Kingdom, whether subject to her Majesty or not. If he succeeds in proving that fact, the liability will be under the Fifth Case. . . . . It is not necessary to consider whether the whole trade of this company ought to be regarded as carried on in England. To my mind it is perfectly clear that, in point of fact, part of its trade is carried on there, and that is sufficient to bring its profits within the First Case of Schedule D" (1). (Cf. in amplification of the above principle, *Grove* v. *Elliots and Parkinson*, *Elliots and Parkinson* v. *Grove* (1896), 3 Tax Cases, 481; *The Frank Jones Brewing Co.* v. *Apthorpe* (1898), 15 T. L. R. 113; 4 Tax Cases, 6.)

"Situated."

See notes on Rule XIII., p. 30.

Case of resident partner.

16. An individual resident in the United Kingdom who is a partner in a foreign business is assessable on his total share of the partnership profits, if he takes any part in the work of the firm (other than the mere purchase of goods for transmission abroad), but not assessable if he is a sleeping partner.

This rule follows directly from *Colquhoun* v. *Brooks*. For what constitutes partnership profits, see Lindley on Partnership, 6th ed. Ch. VII.

In this rule we approach very thin ice, and it can only be advanced with considerable qualification. If *Colquhoun* v. *Brooks* stood alone, undoubtedly the rule

(1) It should be noticed that this last *dictum*—that the existence of part of a business in England makes the profit of the whole assessable under Case I.—is true of businesses conducted by individuals, but requires limitation and re-statement in the case of businesses conducted by corporations. See pp. 40—42, *infra*.

would be correct. But the decision in *Sulley* v. *The Att.-Gen.* (1860), 5 H. & N. 711, has been considered applicable in this class of cases, and mere purchase and export of goods is not regarded as sufficiently a part of the business to make the partner dealing only with such matters an active sharer in the work of the firm. It might well be argued that this case was decided in a wholly different connection, and does not interfere with the argument of the judges in *Colquhoun* v. *Brooks;* but the revenue authorities have accepted the above application, and have based their practice on it. The result is, that a partner in a German firm, a bachelor of simple tastes, whose work is solely the purchase and export of goods to Germany, is assessed under Case V. of Schedule D. only on that part of his share in the partnership profits which is remitted to him here. If he is economical and finds that he can live on 300*l.* a year, and confines his remittances to this sum, he escapes assessment on the balance, though his partnership profits may run into several thousands of pounds.

Case of resident corporation.

17. A corporation (a) resident (b) in the United Kingdom, whose business is situated wholly without, or partly without and partly within the United Kingdom, is assessable on its total profits. A corporation is resident in that place in which it exercises vital powers of management.

(a) **"Corporation."**

Act of 1842, sect. 100, Case I. of Schedule D., Rule II.

(b) **"Resident in the United Kingdom."**

Residence for a corporation has a different significance from residence for the individual. For the individual the term implies an ordinary fact capable of being determined by observation, and is defined according to ordinary use. But for the corporation residence is a purely notional conception, introduced for the purpose of jurisdiction and

law, and is therefore to be arbitrarily limited. (Westlake, Private International Law, 3rd ed., p. 332 *et seq.*; per Lord Westbury, *Bell* v. *Kennedy* (1868), L. R. 1 Sc. & D. A. 307; 22 Dunlop, 269.)

The distinction between domicile and residence is said to be non-existent for the corporation. (Dicey, Conflict of Laws, 154.) It follows that while an individual may have many residences a corporation will, in general, have only one residence and one domicile. It should be noted, however, that this principle has never been categorically laid down by the Courts, and represents only a deduction from the drift of prior judgments. The Courts have always declined to decide the question as to whether a corporation could have more than one residence. *Semble*, if the management of a company were evenly distributed over two countries, the company would be resident in each. The determination of the locality of residence is purely a question of fact. Whenever the balance of evidence shows that the work of most importance is done, there is the seat, and therefore the residence of the corporation. "The domicile of a corporation is the place considered by law to be the centre of its affairs, which, in the case of a trading corporation, is its principal place of business, *i.e.*, the place where the administrative business of the corporation is carried on." (Dicey, *ibid.* 154.)

What constitutes the administrative centre varies according to the legal purpose for which it is to be defined. "The domicile of a corporation is a fiction, suggested by the fact that a corporation is, in certain points, subject to the law of a particular country. . . . . Hence, a corporation may very well be considered domiciled or resident in a country for one purpose and not for another, and hence, too, the great uncertainty as to the facts which determine the domicile or residence of a corporation. In each case the particular question is not, at bottom, whether a corporation has in reality a permanent residence in a particular country, but whether, for certain purposes (*e.g.*,

submission to the jurisdiction of the Courts or liability to taxation), a corporation is to be considered resident in England or in some other country." (Dicey, *ibid.* 155.)

Most of the cases dealing with the residence of a corporation relate to the question of jurisdiction, and show wide instabilities of interpretation. In one case, dealing with County Court jurisdiction, a company was held to reside at its works, and not at its head office; in another, at its head office and not at its works. (*Keynsham Blue Lias Lime Co.* v. *Baker*, 33 L. J. Ex. 41; *Aberystwith Promenade Pier Co.* v. *Cooper*, 35 L. J. Q. B. 44.) A railway company has been held to reside wherever it had a station. (*McMahon* v. *Irish N. W. Rail. Co.*, Ir. Rep. 5 C. L. 200.) But, in general, the principal place of administrative business will be considered the residence of a corporation, and this need not be the place where its manufacturing or other productive operations are carried on. The registration of a company in a particular place is not of itself conclusive evidence of residence.[1] (Cf. *Jones* v. *Scottish Accident Insurance Co.* (1886), 55 L. J. Q. B. 415; 17 Q. B. D. 421; *Watkins* v. *Scottish Imperial Insurance Co.* (1889), 23 Q. B. D. 285; 58 L. J. Q. B. 495; *Carron Co.* v. *Maclaren* (1885), 5 H. L. C. 416; *Newby* v. *Van Oppen Co.*, L. R. 7 Q. B. 293; 41 L. J. Q. B. 148; *Haggin* v. *Comptoir d'Escompte*, 23 Q. B. D. 519; 58 L. J. Q. B. 508; *Att.-Gen.* v. *Jewish Colonisation Association*, (1900) 2 Q. B. 556; 69 L. J. Q. B. 692; *Taylor* v. *Crowland Gas Co.* (1855), 11 Ex. 1; 24 L. J. Ex. 233; *Adams* v. *G. W. Rail. Co.* (1861), 6 H. & N. 404; *Corbett* v.

(1) The American practice on this point is worth noting. For the purposes of taxation a foreign corporation resides in the State of its creation. (*Boston Investment Co.* v. *Boston*, 158 Mass. 461.) But if a foreign corporation have an office and do part of its business in a State, it may be taxed by that State upon its whole business. (*Horn Silver Mining Co.* v. *New York*, 143 U. S. 305.) A corporation may have more than one domicile. (*Memphis, &c. R. R.* v. *Alabama*, 107 U. S. 581.)

General Steam Navigation Co. (1859), 4 H. & N. 482; Lindley, Company Law, 5th ed. App. I. 910.)

But for the purposes of the Income Tax Acts the general definition of "residence" for a corporation is well established. A corporation resides where the centre of gravity in its business is located. Lord Watson, indeed, in the *San Paulo Railway* case (3 Tax Cases, at p. 412), seems to suggest the doctrine that if, in point of fact, any part of a trade is carried on in the United Kingdom, it is sufficient to bring its total profits within Case I. of Schedule D. This would be true of the individual, who is assumed to be a British resident. But, in order to bring a corporation under the rule, it must be proved to be resident; and residence for a corporation, as we have seen, involves the exercise of its chief activity in this or that place.[1] Before the total profits, therefore, of a corporation are assessable under this rule, vital and essential acts of management must be performed in this country. It must be proved "resident," since residence of a corporation involves the administration of the affairs of the business. A business resident in England is a business substantially carried on in England—in the full sense an English business.

Or we may put it otherwise and say that a corporation falls under the rule either if its business is so indivisible that an English portion makes the whole English, or if, while its businesses may be distinguished, it is resident in England. Both contingencies will cover the same facts, since if the vital management is English, then that part is inseparable from the rest, and gives its character to it, while it also makes the corporation a resident.

What constitutes vital and essential activity? It is a question of fact which will naturally vary according to the nature of each business. Many things may assist:—English

(1) It is probable, however, that Lord Watson, in his argument, was assuming that the question of residence in the United Kingdom had already been answered affirmatively. The point is only mentioned because the passage is often cited in Court.

shareholders, English directors, an English office, board and shareholders' meetings held in England, dividends declared in England. No one of these facts is conclusive proof. All, indeed, might conceivably be present without fulfilling the requirements of residence. The facts in each case must be considered on their merits. But it is submitted that the fact of an English head office comes very near being conclusive. Till lately, English registration, though admittedly only *primâ facie* evidence of English residence, happened to have been an invariable concomitant.[1] The recent case of *Goerz & Co.* v. *Bell*, (1904) 2 K. B. 136, was the first instance of a company which was held to reside elsewhere than in the place of its incorporation. This case, indeed, affords one of the best examples of the principle which the Courts have adopted to determine the residence of a corporation. The company was registered in the Transvaal, its manager in Johannesburg had wide powers of initiative, its solitary meeting of shareholders had been held there, and its mining work was confined to South Africa. There was a strong *primâ facie* case against English residence, but, on looking closer, it was seen that the company was really a mining-finance business, that its primary object was to deal in the shares of its subsidiary companies, that for this it required a great financial centre as its home, that it had what is known in French contracts as a "domicile of election," and that its choice had fallen upon London.

But the farthest extension of this principle is to be

(1) The tendency in America has been to regard registration as final proof of the locality of residence. Cf. judgment of Shaw, C. J., in *Blackstone Manufacturing Co.* v. *Inhabitants of Blackstone*, 13 Gray, at p. 489. The leading case is *Bank of Augusta* v. *Earle* (13 Peters, 519), in which David Webster was of counsel. Taney, C. J., said (at p. 588): "It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law and by force of the law, and when that law ceases to operate and is no longer obligatory, the corporation can have no existence. *It must dwell in the place of its creation*, and cannot emigrate to another sovereignty."

found in the recent case of *De Beers Consolidated Mines, Ltd.* v. *Howe* (judgment of Phillimore, J., in K. B. D., 17th April, 1905, 21 T. L. R. 460; of C. A., 6th June, 1905, 21 T. L. R. 578. The case has been appealed to the House of Lords). The company was registered in Cape Colony; its head office was at Kimberley; general meetings of shareholders were always held at Kimberley; *quasi* board meetings were held weekly at Kimberley, attended by some of the directors; its bye-laws required important matters to be submitted to meetings of directors both in Kimberley and in London; and its main industry, the mining of diamonds, was entirely carried on in Cape Colony. On the other hand, four at least of its directors were required to reside in England; *quasi* board meetings were held weekly in London, at which so large a proportion of the directors attended that, on the addition of votes, the scale was never turned by the Kimberley vote; four committees sat in London, dealing with the most important operations of the company; and the larger part of the profits was earned by the control of the world's diamond market under contracts made in London. The Crown relied mainly on the last point, and so far the Courts have found that the company resided in the United Kingdom. The judges, both in the lower Court and in the Court of Appeal, expressly refrained from deciding that the company had its *sole* residence in London, and implied that a company might have two residences. (See p. 40, *supra*.)

Cf. also *Calcutta Jute Mills* v. *Nicholson* (1876), 1 Ex. D. 437; 1 Tax Cases, 83; *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; 1 Tax Cases, 88; *Imperial Continental Gas Assoc.* v. *Nicholson* (1877), 37 L. T. 717; 1 Tax Cases, 138; *London Bank of Mexico* v. *Apthorpe*, (1891) 2 Q. B. 378; 3 Tax Cases, 143; *Denver Hotel Co.* v. *Andrews* (1895), 11 T. L. R. 238; 43 W. R. 339; 3 Tax Cases, 356; *San Paulo (Brazilian) Rail. Co.* v. *Carter*, (1896) A. C. 31; 3 Tax Cases, 407; *Grove* v. *Elliots and Parkinson*, *Elliots and Parkinson* v. *Grove*

(1896), 3 Tax Cases, 481; *The Frank Jones Brewing Co.* v. *Apthorpe* (1898), 15 T. L. R. 113; 4 Tax Cases, 6; *United States Brewing Co.* v. *Apthorpe* (1898), 4 Tax Cases, 17; *St. Louis Breweries* v. *Apthorpe* (1898), 79 L. T. 551; 4 Tax Cases, 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co.* (1899), 80 L. T. 395; 4 Tax Cases, 41.

"Situated."

See notes on Rule XIII., p. 30.

Resident corporation acting through foreign company.

18. If a corporation resident in the United Kingdom carries on a trade abroad by means of a foreign company (which company exists solely as the instrument of the corporation, and is wholly controlled by it), it is assessable on the total profits of such foreign company.

United States Brewing Co. v. *Apthorpe* (1898), 4 Tax Cases, 17. An English company, registered in England and with an English office and directorate, was formed to acquire breweries in the United States. Two of such breweries were held in the name of an American company, all the shares, except three, being owned by the English company. The dividends were declared in England, the amount required for the English shareholders being transmitted to England, and that required for the American shareholders being retained in America. The company was held assessable under Case I. on all its profits.

St. Louis Breweries v. *Apthorpe* (1898), 79 L. T. 551; 4 Tax Cases, 111. In this case the facts were more complicated. An English company was formed to acquire the share capital of an American company which owned certain breweries in the United States; thirteen shares, being the qualification of the American directors, were not acquired. The books were kept in America, and audited each year by an English accountant sent out for the purpose by the English company. At the end of each

year a balance sheet and profit and loss accounts were sent to the English company, who decided upon the dividend. The American company then declared the dividend upon their shares, while the English directors declared the dividend upon the shares of the English company. The dividend upon the shares of the English company held in America was paid there, and sums sufficient to pay the current expenses in England and the dividends due to the English shareholders of the English company were remitted home. The Court held that the business of the American company was carried on by the English company, which was therefore assessable, under Case I., on the whole of its profits. The directors of the American company were held to be merely the agents of the English company.

Apthorpe v. *Peter Schoenhofen Brewing Co.* (1899), 80 L. T. 395; 4 Tax Cases, 41. The facts here were almost identical with the former case. An English company acquired all the shares of an American company except three, but since the laws of the State of Illinois forbade alien companies to hold real estate, the American company was kept on foot. The directors of the English company, who had complete control over the American company and the American business, delegated their power to an American committee of management, which consisted of the directors of the former American company. The procedure in relation to dividends was the same as in the former case. The company was held assessable, under Case I., on the whole of its profits.

The preceding cases have been a little shaken by the decision in the *Kodak* case (see Rule XIX., *infra*), but it is possible to arrive at a sufficiently clear distinction of principle. It is true, as was argued in the last case, that there must be more than a power inherent in the English company of exercising a controlling voice; there must be a *controlling effect*. But this was found as a fact in such cases. It was distinctly found that the English companies were not mere shareholders, however large, in the American companies, having no more control over

them than comes from the possession of most of the shares. Some power of control other than the negative power of shareholders is postulated, and the *exercise of such a power*. Cf. Collins, L. J., 4 Tax Cases, at p. 61: "And one central factor in these matters is: is the ultimate tribunal of appeal, the ultimate controlling power—in England or elsewhere? If it is in England, as it is found here, can you say that a company whose system is that its business is carried on under the paramount supervision and control of its recognised body in England is not partly carried on in England?" But to this statement must be added the rider that the paramount control must be given specific effect to, otherwise the doctrine of *Colquhoun* v. *Brooks* must come into force. A right is not enough; its exercise must be proved.

The Courts have very clearly stated that the question of control is one of fact; and hence, in this class of case, everything depends upon the findings of the Commissioners. It is therefore impossible to deduce from the preceding cases any rules as to what may be held to constitute control of a foreign company. If such a foreign company has no substantive interests of its own, but exists solely as the instrument and agent of the English company; if acts of specific direction are performed from home, even though such direction should involve the delegation of power to a foreign committee; and if the English company have, as a matter of fact, the ultimate authority over the foreign company, which authority is capable of being exercised in direct acts of management, then the foreign business may fairly be said to be carried on by the English company.

Resident corporation shareholder in foreign company.

19. If a corporation resident in the United Kingdom controls, but only as a principal shareholder, a foreign company which carries on a trade situated abroad, (a) the profits of the foreign company are not the profits of

the British corporation so as to be assessable under this case.

Kodak, Ltd. v. *Clark*, (1903) 1 K. B. 505; 4 Tax Cases, 549.

An English company acquired 98 per cent. of the shares of an American company, and retained in its service the American management. The remaining American shareholders were independent. By power of attorney the English company appointed American proxies to vote for it at the meetings of the American company. The interests of the two companies were different, the American company being manufacturers and vendors, and the English company buyers. The two companies bought from and sold to each other in the ordinary way. The Court held that the profits of the American company were not assessable as profits of the English company under Case I., since the American business, though in a sense controlled, was not carried on by the English company.

Some passages in the judgment of Phillimore, J., explain very clearly the *ratio decidendi:* "One must not make the jump from 'control' to 'carrying on business.' A company may control another company or an individual, or an individual may control a company; but it does not necessarily follow that because the individual controls the company, or the company controls the company, or the company controls the individual, that the business carried on by the person or company controlled is necessarily a business carried on by the controller, and particularly is that the case when the machinery of companies is used and the controller is the company." (4 Tax Cases, at p. 582. "One question is: Whose business is it? The other is: Who controls the one business? Now, the *San Paulo Rail. Company* case and the *Frank Jones Brewery Company* case (and some others) deal with the question of Where is the control? There is one business carried on in America, one business carried on abroad: where is the control? If it is in England, then the business is partially carried on in England and is taxable here. The other

class of cases do not deal with that. They deal with the question of whose is the business carried on abroad. Is it the business of the English company or is it the business of someone else? If it is the business of someone else, it matters not that the English company control it, supervise it, administer it: it is the business of the foreign company and the foreign company own it." (*Ibid.* p. 587.)

This decision marks the boundary between Cases I. and V. (See pp. 19—28, *supra.*) If an English company carries on business abroad it is taxable on the whole of its profits, as if the whole business were English. But if the mode of carrying on business is by means of a foreign company of which the English company is the principal shareholder, and therefore the ultimate controlling power, but which is in character an independent corporation, with interests different from the English company, then such a case is no more than the investment of capital in foreign possessions under Case V. The right of control must be exchanged for oversight and direction so continuous as to constitute a carrying on of business abroad, before the English company can be taxed on the profits of the foreign company.

(a) "Situated."

See notes on Rule XIII., p. 30.

Mode of assessment.

20. The duty to be charged in respect of all profits under this rule shall be computed on a sum not less than the full amount of the balance of the profits (a) of such trade or profession (b) upon an average of three years ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade or profession are usually made up, or on the 5th day of April preceding the year of assessment. If the trade or profession shall have been set

up and commenced (c) within the period of three years, the computation shall be made for one year on the average of the balance of profits from the period of setting up the same; if set up or commenced within the year of assessment, the computation shall be made either on the full amount of the profits received during that year or according to an average of such period less than one year, as the case may require and as the Commissioners shall direct (d).

Act of 1842, sect. 100, Schedule D., Case I., Rule I., and Case II.

(a) **"Balance of Profits."**

In the revenue legislation prior to the Act of 1805 the phrase usually employed was "the amount of profits." The two phrases are identical in meaning. (Per Lord Blackburn, *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, at p. 334; 1 Tax Cases, 287, at p. 319. Cf. the words of Lord Herschell, *Gresham Life Assurance Society* v. *Styles*, (1892) A. C. 309, at p. 323; 3 Tax Cases, 185, at p. 195.)

The expression "balance of the profits or gains" is not a happy one, but the meaning obviously is the balance arrived at by setting against the receipts the expenditure necessary to earn them.

(b) **"Trade or Profession."**

Under the Act of 1842 the profits of a profession were treated differently from those of a trade, and the full amount of the profits of the preceding year were assessed. The three years' average was introduced by the Act of 1853, sect. 48.

(c) **"Commenced."**

If a private partnership is incorporated into a company there is a succession by the company within the meaning

of Cases I. and II., Schedule D., Rule IV., but the business is still to be regarded as an old one, and not one "set up and commenced" within the meaning of the rule. It is the business which is to be regarded in this connection, and not the association which conducts it. (*Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485; 1 Tax Cases, 343.)

(d) This is the rule in Case VI. of Schedule D., which provides for the charging of duty "in respect of any annual profits or gains not falling under any of the foregoing rules and not charged by virtue of any of the other schedules contained in this Act."

Deduction allowed.

21. In estimating the balance of profits, no deductions shall be allowed save as follows:—

I. On account of any sum (a) usually expended for repairs of premises occupied for the purposes of such trade or profession, or for the supply or repair of any implements or articles used for the purposes of such trade or profession, according to an average of three years preceding the year in which the assessment is made.

II. On account of losses (b) connected with or arising out of such trade or profession.

III. On account of losses (c) in another trade or profession carried on by the same person whom it is purposed to assess.

IV. On account of bad debts (d) proved to be such to the satisfaction of the Commissioners.

V. On account of that portion of the rent (e) not exceeding two-thirds of the total rent bonâ fide paid which may be attributable to that part of a dwelling-house, with appurtenances, which is occupied for the purposes

of any trade or profession hereby charged, provided that the sum deducted shall not exceed the amount of assessment of the said premises under Schedule A.

VI. On account of any profits (f) arising from lands, tenements or hereditaments occupied for the purpose of such trade or profession.

VII. On account of any premium (g) paid in respect of any contract of life assurance, provided the sum deducted in respect of such premium shall not exceed one-sixth part of the whole amount of profits of the person so chargeable.

VIII. On account of the depreciation (h) of any machinery or plant used for the purpose of the business assessable, the deduction being such sum as the Commissioners may think fair and reasonable.

Act of 1842, sect. 100, Schedule D., Case I., Rules III. and IV.; Case II., Rules II. and III; Rules I. and II. applicable to both cases. Sects. 101 and 159. Also Act of 1853, sects. 50 and 54; 41 & 42 Vict. c. 15, s. 12; 53 & 54 Vict. c. 8, s. 23; 61 & 62 Vict. c. 10, s. 9.

This scheme of deductions may be taken as a further elaboration of the words "balance of profits and gains." (See p. 50, *supra.*) In estimating the balance of profits, all legitimate working expenses fall to be deducted from the gross receipts. Rule I. applicable to Cases I. and II. As a general rule, no sum paid on account of capital can be considered working expenses. For example, the interest paid by an English company, whose works and property were situated in Egypt, to its Egyptian debenture holders was held not to be an allowable deduction. The profits of trading cannot be diminished by debts for borrowed capital. (*Alexandria Water Co.* v. *Musgrave*

(1883), 11 Q. B. D. 174; 1 Tax Cases, 521. Cf. on the point the following cases: *Southwell* v. *Savill Bros.*, (1901) 2 K. B. 349; *Anglo-Continental Guano Works* v. *Bell* (1894), 70 L. T. 670; 3 Tax Cases, 239; *Arizona Copper Co.* v. *Smiles*, (1891) 29 Sc. L. R. 134; 3 Tax Cases, 149; *Smith* v. *Westinghouse Brake Co.* (1888), 2 Tax Cases, 357; *Gresham Life Assurance Society* v. *Styles*, (1892) A. C. 309; 3 Tax Cases, 185; *Texas Land and Mortgage Co.* v. *Holtham* (1894), 10 T. L. R. 337; 3 Tax Cases, 255; *Rhymney Iron Co.* v. *Fowler*, (1896) 2 Q. B. 79; 3 Tax Cases, 476.)

The eight special deductions from above may be considered as to a certain extent infractions of the general principle, and therefore requiring special statutory provision.

(a) "**Sums expended for the Repair of Premises, &c.**"

Act of 1842, sect. 100, Schedule D., Case I., Rule III.

Repairs on tied houses owned by brewers are not a subject for deduction, since the premises in question must be occupied by the person assessed for the purposes of his trade. (*Brickwood & Co.* v. *Reynolds*, (1898) 1 Q. B. 95; 3 Tax Cases, 600. Cf. also *St. Andrew's Hospital* (*Northampton*) v. *Shearsmith* (1887), 19 Q. B. D. 624; 2 Tax Cases, 219.)

(b) "**Losses arising out of the Trade or Profession.**"

Act of 1842, sect. 100, Schedule D., Case I., Rule III., Case II., Rule III. Cf. *Reid's Brewery Co.* v. *Male*, (1891) 2 Q. B. 1; 3 Tax Cases, 279; *Smith* v. *Westinghouse Brake Co.* (1888), 2 Tax Cases, 357.) An average loss is only a subject for deduction when the actual amount is settled after adjustment. (Case I., Rule III.)

(c) **Losses in another Trade or Profession.**"

Act of 1842, sect. 101:—

"Nothing herein contained shall be construed to restrain any person carrying on, either solely or in partner-

ship, two or more distinct trades, manufactures, adventures or concerns in the nature of trade, the profits whereof are made chargeable under the rules of Schedule D., from deducting or setting against the profits acquired in one or more of the said concerns the excess of the loss sustained in any other of the said concerns over and above the profits thereof, in such manner as may be done under this Act when a loss shall be deducted from the profits of the same concern."

The Act of 1890 (53 & 54 Vict. c. 8), sect. 23 (1), gave further relief—extending to *professions* as well as trades—by allowing a man, who incurred a loss after assessment, to apply to the Commissioners for an adjustment of his assessment in respect of such loss. (Cf. *In re Corporation of Birmingham* (1875), 1 Tax Cases, 26; *Highland Rail. Co.* v. *Special Commissioners of Income Tax* (1885), 23 Sc. L. R. 116; 2 Tax Cases, 151; *Brown* v. *Watt* (1886), 23 Sc. L. R. 403; 2 Tax Cases, 143; *Religious Tract and Book Society of Scotland* v. *Forbes*, (1896) 33 Sc. L. R. 289; 3 Tax Cases, 415; *Grimes* v. *Lethem* (1898), 3 Tax Cases, 622; *Bray* v. *Brothers* (1897), 13 T. L. R. 325; 3 Tax Cases, 550—this case decided that a loss on trading under Schedule D. cannot be set off against profits assessable under Schedule E. Cf. also on the point, per Lord Watson, *Tennant* v. *Smith* (1892), 3 Tax Cases, at p. 168.)

(d) "**Bad Debts,**" **&c.**

Case I., Rule III. The valuation of such debts is left to the Commissioners. Cf. Act of 1853, sect. 50:—

"In ascertaining, estimating or assessing the profits of any person chargeable under Schedule D. of this Act, upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing to such person; and in the case of the bankruptcy or insolvency of the debtor, the amount of the dividend which may reasonably be expected on any such debt shall be deemed to be the value thereof; and the duty chargeable under

the said schedule shall be assessed and charged upon the estimated value of all such doubtful debts accordingly." (*Reid's Brewery Co.* v. *Male*, (1891) 2 Q. B. 1; 3 Tax Cases, 279.)

(e) "**Rent of Dwelling-house, Part of which is used for Business.**"

Act of 1842, sect. 100, Schedule D. Rule I. applicable to Cases I. and II. Also sect. 101.

By the Act of 1898 (61 & 62 Vict. c. 10), sect. 9, it is provided that when "any sum is deducted on account of the annual value of the premises used for the purpose of such profession, trade, employment or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises for the purpose of income tax under Schedule A. to the said Act, as reduced for the purpose of collection under sect. 35 of the Finance Act, 1894."

A dwelling-house, of which a part is used for business, is not the same thing as business premises in part of which an official may reside for the purpose of the business. Where, for example, a portion of a bank's premises is used as the residence of the manager, the bank is not a dwelling place within the meaning of the rule, and the two-thirds limit does not apply. (*Russell* v. *Aberdeen Town and County Bank* (1888), 13 A. C. 418; 2 Tax Cases, 321; *Tennant* v. *Smith*, (1892) A. C. 150; 3 Tax Cases, 158.)

(f) "**Profits arising from Land and Tenements used for Business.**"

Rule II. applying to Cases I. and II.

A provision to prevent double taxation, which would arise if profits normally assessable under Schedule A. were also assessed under Schedule D.

(g) "**Premiums paid in respect of any Life Assurance.**"

This deduction, which was allowed in the earlier Income Tax Acts, disappeared in the Act of 1842, but reappeared

in the Act of 1853, sect. 54. (Cf. also 16 & 17 Vict. c. 91 ; 18 & 19 Vict. c. 35 ; 22 & 23 Vict. c. 18 ; 23 & 24 Vict. c. 14.)

By 16 & 17 Vict. c. 91, s. 1, an insurance to fall within this rule must have been made with an insurance company existing on 1st November, 1814, or registered under the Joint Stock Companies Acts. The concession was extended to insurances with friendly societies and contracts for deferred annuities with the Commissioners for the Reduction of the National Debt by 18 & 19 Vict. c. 35 and 22 & 23 Vict. c. 18, s. 6.

Insurance with a foreign company does not entitle the assured to any deduction under this rule. (*Colquhoun* v. *Heddon* (1890), 25 Q. B. D. 129; 2 Tax Cases, 621; *Murphy* v. *Colquhoun* (1891), 7 T. L. R. 613.) By 4 Edw. 7, c. 7, s. 9, the relief in respect of life insurance premiums was extended to "life insurances or contracts for deferred annuities effected in or with any insurance company legally established in any British possession."

(h) "**Depreciation.**"

41 & 42 Vict. c. 15, s. 12.

Prior to this Act depreciation could not be claimed as a trade loss. (*Addie & Sons* v. *Solicitor of Inland Revenue* (1875), 12 Sc. L. R. 274; 1 Tax Cases, 1; *Forder* v. *Handyside* (1876), L. R. 1 Ex. D. 233 ; 1 Tax Cases, 65.)

The following decisions which concern steamship and railway companies, deal with the kind of depreciation for which deductions will be allowed. (*Caledonian Rail. Co.* v. *Banks* (1880), 18 Sc. L. R. 85; 1 Tax Cases, 487; *Burnley Steamship Co.* v. *Aikin*, (1894) 31 Sc. L. R. 803; 3 Tax Cases, 275 ; *Leith, Hull and Hamburg Steam Packet Co.* v. *Bain* (1897), 3 Tax Cases, 560; *Cunard Steamship Co.* v. *Coulson*, (1899) 1 Q. B. 865; 4 Tax Cases, 63; *Leith, Hull and Hamburg Steam Packet Co.* v. *Musgrave*, (1899) 36 Sc. L. R. 745 ; 4 Tax Cases, 80 ; *P. and O. Steam Navigation Co.* v. *Leslie* (1900), 79 L. T. 118; 82

L. T. 137; 4 Tax Cases, 177; *British India Steam Navigation Co.* v. *Leslie* (1900), 17 T. L. R. 104; 4 Tax Cases, 257.)

From these cases it is established that the Commissioners have a practically unlimited discretion to determine what, as a matter of fact, is "just and reasonable," having regard to the nature of the business.

Mode of collection.

22. The duty chargeable under this rule shall be charged upon the person carrying on the trade or profession liable to charge, and in case of partners the return shall be made by the precedent acting partner named in the agreement of partnership who shall be resident in Great Britain, which return shall create a joint charge upon the partners. Where no partner is resident in Great Britain the return shall be made by the agent resident in Great Britain, and the assessment shall be made jointly in the partnership name.

Rules applicable to Cases I. and II., Nos. 2—4.

The assessment is made by the additional Commissioners, subject to an appeal to the Commissioners for general purposes.

CHAPTER V.

MISCELLANEOUS PROVISIONS.

23. An accredited minister or diplomatic agent of a foreign State (a) is not liable to taxation on behalf of any house or tenement occupied by him (b) or on behalf of any dividends from stock standing in his name (c).

Act of 1842, sect. 60, Schedule A., Rule VII.; sect. 88, Schedule C., Rule V.

The taxation of foreign diplomatic agents is based upon two principles of international law: the ex-territoriality of their residences, and their immunity from the civil and criminal law of the State to which they are accredited. The first is stated by Wheaton as follows: "The residence" (of an ambassador) "is considered as a continued residence in his own country, and he retains his national character, annexed with that of the country where he locally resides." (International Law, edited by Atlay, § 95.) The second is thus defined by the same authority: "From the moment a public minister enters the territory of the State to which he is sent, during the time of his residence, and until he leaves the country, he is entitled to an entire exemption from the local jurisdiction, both civil and criminal." (*Ibid.* § 224.) The result of the operation of the two principles is, therefore, that "The personal effects or movables belonging to the minister, within the territory of the State where he resides, are entirely exempt from the local jurisdiction; so, also, the dwelling-house; but any other real property, or immovables, of which he may be possessed within the foreign territory, is subject to its laws and jurisdiction."

(*Ibid.* § 227.) "The person and personal effects of the minister are not liable to taxation." (*Ibid.* § 242. Cf. also Westlake, International Law, Part I., pp. 263—270; Vattel, IV., Chap. 8, §§ 113—115; Martens, *Précis*, &c., VII., Chap. 8, § 217.)

In practice, therefore, an ambassador of a foreign State must be considered for the purpose of taxation a foreigner resident abroad; and such taxes as are due from him can only be recovered if his income is taxed at the source, or by diplomatic agreement, since he cannot be compelled to pay by an action-at-law.

(a) "**Diplomatic Agent of a Foreign State.**"

The usual custom is for the various ambassadors to compile lists of the members of their suites who are entitled to exemption, and to forward them to the Foreign Office, which, in turn, prepares a list for the information of the revenue authorities.

Consuls have no diplomatic character, nor have commissioners sent for special purposes. (Wheaton, § 249; Westlake, *op. cit.* 269, 276.) Consuls, however, have by custom certain privileges, which do not depend upon the status of a diplomatic agent in international law, but upon the grace of the country to which they are sent. One of these, according to Sir Robert Phillimore (II., § 248), is that of exemption from any "personal" tax. At law they are liable to the income tax on the same basis as the English citizen; but exemption, as a matter of courtesy or international agreement, may from time to time be extended to them in respect of certain kinds of income. This, however, is a question not of law but of public policy.

A British subject, a member of a foreign mission, has all the privileges of a foreign diplomatic agent, unless the government to which he is sent has expressly excluded them in the terms on which he is received. (*Macartney* v. *Garbutt* (1890), L. R. 24 Q. B. D. 368.)

(b) "**Any House or Tenement occupied by him.**"

This exemption under Schedule A. follows naturally from the second of the two principles of international law stated above. Under this schedule (Rules for Charging the said Duties, No. IX.) the tax is levied on and recoverable from the occupier of a house or tenement, and is deducted by him from the rent payable to his landlord. In the case of ambassadors, against whom there is no such recourse, it is provided that the duty "shall be charged and paid by the landlord or person immediately entitled to the rent of the said house or tenement." (Rule VII.)

(c) "**Dividends from Stock standing in his Name.**"

Rule V. of Schedule C. exempts from taxation "the stock or dividends of any accredited minister of any foreign State resident in the United Kingdom; provided the property thereof shall, if standing in the name of any trustee, be duly proved before the said Commissioners for special purposes by such trustee." The exemption is based on the ex-territoriality system, the conception of a diplomatic agent as a foreigner residing abroad: but it should be noticed that it goes far beyond the privileges granted to a foreign resident. The foreign resident, for example, pays tax on dividends from English public stock, but the ambassador, though for the purpose he is ranked as an ordinary foreign resident, goes free.

The exemption is, in reality, an anachronism. In all income tax Acts up to and including the Act of 1803, the foreign holders of English public stock were exempted from taxation. (See pp. 65—66, *infra*.) The provision was not repeated in the Act of 1842, which inaugurated the present taxation of foreign income, but the section dealing with ambassadors remained to exemplify the principle which was elsewhere rejected.

24. An accredited minister or diplomatic agent of a foreign State is considered, for the purposes of the tax, as a foreigner resid-

ing abroad, and is liable to taxation in the same degree as such a foreign resident is liable. No personal action, however, will lie against him for the recovery of the tax or any arrears or penalties.

The principles on which this rule is based have been already explained in the notes to the preceding one. A diplomatic agent is (1) liable to the same taxation as a foreigner resident abroad; (2) obliged to pay only what can be deducted from income at the source. At the same time, it is understood that the tax included under (1) is generally paid on requisition as a matter of international courtesy. In effect, then, the ambassador, &c. will be taxed as follows:—

Under Schedule A. no tax payable on the embassy or any house or tenement occupied (see preceding Rule), but tax due on any landed property owned by the ambassador. If, for example, the French minister possesses a moor in Scotland he pays income tax on its value; and, if he should decline to pay, profits in the hands of his agent would be liable, if they could be reached.

Under Schedule B. the contingency does not arise, or is too remote to be worth our notice.

Under Schedule C. the ambassador is expressly exempted by statute from any liability.

Under Schedule D. the ambassador is liable under Cases I. and II. if he is willing to pay, or if the income from such source can be reached in the hands of an agent or receiver. (In the event of an ambassador carrying on trade and thereby procuring certain special property, the principles of international law would seem to allow such property to be seized for the purpose of any local revenue law. Cf. Merlin, V. § 4, No. 6; Klüber, Part 2, II. Chap. 3, § 210. No government, however, would be likely to take such a course, and payment could be secured more easily by diplomatic representation.)

Under Case IV. he is exempt by statute.

Under Case V., as a foreigner residing abroad, receiving income from a foreign source through English channels, he is exempt under Rule XXIX. (See p. 67, *infra.*)

Under Schedule E. he is exempt, since the post for which he receives his official salary is not a public office or employment of profit "within the United Kingdom" within the meaning of the Act of 1842, sect. 146, Schedule E., Rule III. These words, as will be explained later, must be given a strict interpretation, and confined to trades and employments which, as carried on by the person whom it is proposed to assess, are British in their locality. But the presumed extra-territoriality of the ambassador takes him out of this class. (See Rules XXXVIII. and XXXIX., *infra.*)

25. Every holder of a foreign public office or employment of profit(a), who performs the duties of such office in the United Kingdom, is liable to taxation (b) in respect of the emoluments accruing to him by reason of such office or employment.

Act of 1842, sect. 146, Schedule E.; Act of 1853, sect. 2, Schedule E.

The duty is charged, according to Rule I. of the Schedule, on "all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments or pensions, after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been really and *bonâ fide* paid and borne by the party to be charged." (See *Beaumont* v. *Bowers*, (1900) 2 Q. B. 204; 4 Tax Cases, 189.)

(a) **"Public Office or Employment of Profit"** is thus defined by Rule III. of the Schedule as "any office belonging to either House of Parliament, or to any Court of justice, whether of law or equity [in the United Kingdom],

or any criminal, or justiciary, or ecclesiastical Court, or Court of Admiralty, or commissary Court, or court-martial; any public office held under the civil government of her Majesty, or in any county palatine, or the Duchy of Cornwall; any commissioned officer serving on the staff, or belonging to her Majesty's army, in any regiment of artillery, cavalry, infantry, royal marines, royal garrison battalions, or corps of engineers or royal artificers; any officer in the navy, or in the militia or volunteers; any office or employment of profit held under any ecclesiastical body, whether aggregate or sole, or under any public corporation, or under any company or society, whether corporate or not corporate; any office or employment of profit under any public institution, or on any public foundation, of whatever nature or for whatever purpose the same may be established; any office or employment of profit in any county, riding or division, shire or stewartry, or in any city, borough, town corporate, or place, or under any trusts or guardians of any fund, tolls or duties, to be exercised in such county, riding, division, shire or stewartry, city, borough, town corporate or place; and any other public office or employment of profit of a public nature."

The schedule attached to the Act of 1853, which is the schedule of charges in force, taxes simply "any public office or employment of profit, and any annuity, pension or stipend, payable by her Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under Schedule C."

The wording of Schedule E. in the Act is somewhat vague, and there have been few decisions of the Courts to give clearness to its provisions. Many cases are on the brink of Schedules D. and E. and might with reason fall under either. Roughly speaking, we may say that, apart from government and municipal or provincial officials, the officials of all public companies hold offices of profit under Schedule E. Clearly, however, mere employment by a public body, as opposed to the holding of an office which is part of the fixed establishment, does not bring within

the schedule. A secretary of a railway company, for example, pays under Schedule E., but not engine drivers, porters and labourers, who pay under Schedule D. (*Att.-Gen.* v. *Lancashire and Yorkshire Rail. Co.* (1864), 2 H. & C. 792.)

Foreign income will come under the schedule in two forms:—

(1) The salaries of officials of a foreign government resident in England.

(2) The salaries of officials of a foreign company or corporation resident in England.

Under (1) fall the salaries of ambassadors and other diplomatic agents, who are exempt for the reasons given in the notes to Rules XXIII. and XXIV. The salaries of consuls, trade agents, and commissioners for any special purpose, paid by a foreign government, are at law taxable under Schedule E., and any exemption which may be granted is a matter of international courtesy.

Under (2) the kind of case which arises is that of an English correspondent of a foreign newspaper syndicate, an English agent of a foreign trading company, the manager of an English branch of a foreign bank who is salaried from foreign funds. Income in such cases may be taxed under Case V. of Schedule D., but it is more properly taxed under Schedule E.

(b) "Liable to Taxation."

In calculating the amount assessable, all official deductions made before payment are to be deducted. (Rule IX. of Schedule E.) When possible, salaries are to be assessed in the hands of the offices charged with their payment, and the tax deducted before distribution. (Rule VI.; cf. also sects. 153—155.) The assessment is to be made by the special Commissioners, save in those cases where the salary is transmitted direct to the official, and there is no possibility of taxing it at the source, when the levy is made by the general Commissioners for the district where the official resides. (Sect. 155.)

Part II.

INCOME OF RESIDENTS ABROAD DERIVED FROM THE UNITED KINGDOM.

CHAPTER VI.

INCOME FROM LANDS, SECURITIES, POSSESSIONS AND PUBLIC STOCK IN THE UNITED KINGDOM.

26. Duty is payable in respect of all profits from lands, tenements, hereditaments, or heritages in the United Kingdom owned by individuals or corporations resident abroad (a).

Act of 1842, sect. 60, Schedule A.; Act of 1853, sect. 2, Schedule A.

(a) "**Resident abroad.**"

I.e., any individual or corporation not resident in the United Kingdom. For the definition of "residence," cf. pp. 32—34 and pp. 39—45, *supra*.

27. Duty is payable in respect of all profits from public stock (a) in the United Kingdom owned by individuals or corporations resident abroad.

Act of 1842, sect. 88, Schedule C.; Act of 1853, sect. 2, Schedule C.

(a) "**Public Stock.**"

Since the disastrous attempt (in 4 & 5 Will. & Mary, c. 15, ss. 10—12) to raise a special tax on public stock,

the funds have always been free from any separate taxation. For long every loan Act contained the proviso that government annuities should be clear of all taxes and duties whatsoever. Addington, in 1803, proposed to introduce a Bill taxing the funds specifically, but was prevented by Pitt, and in the Income Tax Act, 1803 (43 Geo. 3, c. 122), Schedule C. was included substantially in the form it took in 1842. The present rule, however, did not exist, since there was a special exemption in favour of foreigners living abroad, the principal grounds being that foreign investments in our funds should be encouraged in every possible way, and that the foreigner, being unrepresented in Parliament, should not be held subject to a tax to which he had not consented. This exemption was allowed to drop in the Act of 1842.

28. Duty is payable in respect of all profits from securities (a) and possessions (b) in the United Kingdom owned by individuals or corporations resident abroad.

Act of 1842, sect. 100, Schedule D., Cases IV. and V.; Act of 1853, sect. 2, Schedule D.

This rule is the converse of the rules contained in Chapters II. and III. In those the residence of the owner in the United Kingdom made increment of foreign origin taxable; here the English origin makes the increment taxable though belonging to a foreign resident.

(a) "**Securities.**"

See notes in Chapter II., pp. 7—8, *supra.*

(b) "**Possessions.**"

See notes in Chapter III., pp. 20—22, *supra.* Cf. also Chapter VII., *infra.*

29. If profits from possessions, securities, trades, or professions situated abroad are transmitted to a person resident abroad

through the medium of agents or trustees resident in the United Kingdom, such a medium of transmission shall not constitute the profits transmitted profits from possessions, securities, &c. situated in the United Kingdom so as to be taxable under the foregoing rules.

Udney v. *East India Co.* (1853), 13 C. B. 733.

A retired civil servant, a resident in France, received a pension from a Bengal fund. The money at his election was paid in London by the East India Company, who acted as agents. The Court held that the annuity was not liable to taxation under the Act of 1842, since it was paid neither out of a fund in England nor to an English resident.

This case was decided before the passing of the Act of 1853, but it is submitted that it is not affected by the provisions of that Act. If the recipient of an annuity is not resident in England, and the annuity does not come out of English funds, the mere fact of the agency of payment being English does not bring it within the sweeping clauses at the close of sect. 2, Schedule D. of that Act. This view is strengthened by sect. 5 of the Revenue Act, 1868 (31 & 32 Vict. c. 28), which provides that annuities payable out of the funds of any institution in India, which shall have been entrusted to any person resident in the United Kingdom for payment to any person resident in the United Kingdom, shall be taxable according to the provisions of sect. 10 of the Act of 1853. This express enactment excludes, by implication, the taxation under the earlier Act of the foreign resident who is the recipient of such an annuity.

It should be noted that the principle laid down in the *Udney* case applies only to profits assessed under Schedule D. Such profits are, in practice, generally taxed, and the tax is repaid to the owner on making certain declarations. Specimens of these are printed in the Appendix, pp. 98—103.

30. A foreign holder of foreign public stock is exempted from taxation on all dividends of such stock paid in the United Kingdom. An inhabitant of a British colony is likewise exempted in respect of the public stock of his own colony. But a British subject, other than a colonist residing anywhere out of the United Kingdom, is liable to taxation on all dividends of all foreign public stock so paid(1).

Act of 1842, sect. 88, Schedule C.

This rule applies only to profits taxed under Schedule C., as the foregoing rule applies only to those under Schedule D. Most of its details are not based on statutes, but on special Treasury concessions. Specimens of the forms required in obtaining either repayment of the tax or payment free of tax will be found in the Appendix, pp. 88—103.

31. All profit under Rules XXVI.—XXVIII. shall be taxable in the first instance in the manner provided for such classes of profit, as if they appertained to persons resident in the United Kingdom: and in the second instance, in the hands of the agents, factors, trustees or other persons charged with their collection.

Profits under Rule XXVI. follow the ordinary practice under Schedule A. and are taxed when they arise, the tax being paid, in the first instance, by the occupier. See also Act of 1842, sects. 60 and 61. For Rules XXVII. and XXVIII., see *ibid.*, sects. 80—99, and sect. 100. For the supplementary method of taxation in the hands of agents, see Act of 1842, sects. 41, 44, 51, 53, and 102; Act of 1853, sect. 40; Customs and Inland Revenue Act, 1888, sect. 24.

See also notes on pp. 2—4.

(1) The word "foreign," it should be remembered, includes "Indian" and "Colonial."

CHAPTER VII.

INCOME FROM TRADES AND PROFESSIONS CARRIED ON IN THE UNITED KINGDOM.

32. Duty is payable on all profits (a) from trades or professions (b) carried on in the United Kingdom through the medium of a branch or agency (c) by individuals or corporations resident abroad (d). Duty payable.

Act of 1842, sect. 100, Schedule D., Cases I. and II.; Act of 1853, sect. 2, Schedule D. Duty is to be charged "for and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of her Majesty or not, although not resident within the United Kingdom, from any . . . profession, trade, employment, or vocation exercised within the United Kingdom."

(a) "**Profits.**"

See as to the meaning of "profits," notes to Chapter IV., Rules XX. and XXI., pp. 49—57, *supra*. The rules for arriving at the balance of profits and for making deductions are the same as those for ordinary trading and professional profits under Schedule D.

(b) "**Trades or Professions.**"

See note to Chapter IV., Rule XIII., pp. 29—30, *supra*.

(c) "**Branch or Agency.**"

Act of 1842, sects. 41 and 44. The limitation is a *concessio propter infirmitatem*. The principal is assessable if he can be found; but as the non-resident is not generally to be found, taxation under this rule must, in practice, be

limited to cases where he works through a resident branch or agent. A French painter who visited England to execute a few commissions comes clearly under the rule, but there is no known method of rendering him liable for the profits earned in this country. The principal, if by any chance he can be reached, is the proper person to be assessed in the first instance, and the alternative method sanctioned by sect. 41 is not to be used except in the last resort. The last resort, however, must in most cases be also the first. (*Tischler & Co.* v. *Apthorpe* (1885), 52 L. T. (N. S.) 814; 2 Tax Cases, 89.)

What constitutes an agency is a question of fact. The existence of a true agency under this section is equivalent to the carrying on of business in this country, just as the residence of a corporation implies the carrying on of business here. (See Chapter IV., Rule XVII.)

A mere agency for the purchase of goods is not such an agency as to constitute a carrying on of business. A New York firm had a branch here, conducted by one of the partners, whose sole business was the purchase of goods for export to America. The goods were sold and all profits were made there. It was held on appeal that the firm carried on trade solely in America, and that there was no business in England which could be assessed. (*Sulley* v. *Att.-Gen.* (1860), 5 H. & N. 711; 29 L. J. Ex. 464.)

Any agency, however, which conducts English sales is a business, and therefore assessable. By conducting English sales is to be understood, not the mere delivery of the goods or the receipt of payment, but the making of the contracts themselves. (See notes on Rule XXXIV., *infra*.)

In *Tischler & Co.* v. *Apthorpe* (1885), 52 L. T. (N. S.) 814; 2 Tax Cases, 89, a French firm sent wine to England, sometimes direct to customers, sometimes to its *del credere* agents. The firm had an office here, and its chief partner was in England on an average about four months each year. It was held that the profits from English sales were assessable, since the trade was carried on in England.

In *Pommery & Greno* v. *Apthorpe* (1886), 56 L. J. Q. B. 155; 2 Tax Cases, 182, a French firm of wine merchants had a resident agent in England who solicited orders and collected payments. He was paid by a commission on sales. The wine was supplied to the customer either from a stock in the hands of the English agents or direct from France. It was held that the firm, through its agent, carried on business here.

A company registered in Norway, where its office was, and its share list and books were kept and shareholders' meetings were held, owned a ship. The chartering and all voyage receipts and expenses were dealt with by a firm resident in Glasgow, who received and retained all funds till required. It was held that the company exercised a trade in the United Kingdom on the profits of which its agents were assessable. (*Wingate* v. *Webber*, (1897) 34 Sc. L. R. 699; 3 Tax Cases, 569.)

A foreign firm consigned goods to an English firm for sale on commission. The risk of loss and the chance of profit lay with the foreign firm, but the English firm had full discretion as to prices; they insured the goods in their own name, received the proceeds of sales, assumed all responsibility as to payment by purchasers, and returned periodical accounts to their principals. It was held that the foreign firm exercised a trade in the United Kingdom. (*Watson* v. *Sandie & Hull*, (1898) 1 Q. B. 326; 3 Tax Cases, 611.)

Cf. also *Werle & Co.* v. *Colquhoun* (1888), 20 Q. B. D. 753; 2 Tax Cases, 402; *Erichsen* v. *Last* (1881), 8 Q. B. D. 414; 1 Tax Cases, 351, 537; *Grainger & Son* v. *Gough*, (1896) A. C. 325; 3 Tax Cases, 462; *Turner* v. *Rickman* (1898), 4 Tax Cases, 25.

(d) "**Resident abroad.**"

I.e., all of whom the fact of English residence cannot be established. It is not necessary to prove the foreign residence. The mere possession of a branch in England where a certain amount of business is done does not make

the possessor an English resident. (*Att.-Gen.* v. *Alexander* (1874), L. R. 10 Ex. 20; cf. also *Wingate* v. *Webber*, (1897) 34 Sc. L. R. 699; 3 Tax Cases, 569.)

For the case of income from a foreign source paid to a foreign resident through an agent in the United Kingdom, see Rules XXIX. and XXX., *supra*, pp. 66—68.

Profits earned partly by foreign means.

33. An agency or branch exercising a trade in the United Kingdom is assessable on its profits, though such profits may be partly or mainly earned by foreign means.

It is obvious that the profits of a branch must always be partly attributable to the work of the foreign principal, who is responsible for the general direction of the business. The above rule authorises taxation even when the substantive part of the profit-earning activity is foreign. (Cf. Denman, J., 2 Tax Cases, p. 189: "Even though the appellants may carry on a very much larger trade, of which this trade is, as it were, a branch or part, in one sense, mainly abroad, nevertheless there is nothing in the statutes to prevent it from being a carrying on of a trade in this country.")

A company resident in Denmark had three cables connected with cable stations in the United Kingdom. Under an agreement with the Postmaster-General, they had also separate wires worked by their own staff between these cable stations and their office in London. No profits were made from the transmission of messages over these wires. The company argued that no profits could be attributed to that portion of their plant situated in the United Kingdom, and that, if they were liable to assessment on the profit of their main cables, they should not be assessed on profits earned by messages transmitted further on lines which did not touch the United Kingdom. It was held that the company exercised a trade in the United Kingdom, and was assessable on the profits derived from its receipts here. (*Erichsen* v. *Last* (1881), 8 Q. B. D. 414; 1 Tax Cases,

351, 537.) The point decided by this case is that it is immaterial where the profit-earning plant may be situated or the actual profit-earning business carried on, provided that the contracts on which these profits are earned are made by the English branch. A message accepted in London for transmission to Tokio had to travel first to Newcastle over the company's private wires, then to Copenhagen over the company's cables, then on the Danish Government's wires, then on the company's Baltic cables, then on wires belonging to the Russian Government, and lastly over further cables of the company. Profits were admittedly not made on the British wires, the only part of the profit-earning plant actually situated here. But the contract for the whole transmission was made by the London branch, and therefore the profits were assessable as earned in this country. So also with the case of French wines. The wine is made abroad, but if it is sold in England the profits on the sale are assessable as English profits.

Meaning of "a trade in United Kingdom."

34. An agency or branch exercises a trade in the United Kingdom if it makes contracts, even though it does not deliver goods or receive payments.

A firm of foreign wine merchants appointed an English firm as sole agents for the sale of their wine. Orders, when obtained, were transmitted to the foreign firm who sent the wine direct to the purchaser, delivery being made abroad. Payment might be made either to the foreign or the English firm. It was admitted that the contracts were made here. The Courts held that a trade was exercised within the United Kingdom.

Werle & Co. v. *Colquhoun* (1888), 20 Q. B. D. 753; 2 Tax Cases, 402, per Esher, M. R., at p. 411: "I cannot help thinking that profits may be received abroad from a trade, which trade is carried on in England, and yet cannot the less be said to be profits the result of a trade which is

carried on here. If the profits are received in England, that is a very strong circumstance; if there is an establishment in England, that is a very strong circumstance: but neither of them is essential. One must come to see what is the truth. If the trade consists in making contracts, which are profitable contracts; if those contracts are made in England, then the trade is carried on in England, because the making of the contracts is the very substance and essence of the trade."

Cf. *Ibid.* p. 408: "It is a question of fact in each case. Well, if it is a question of fact in each case, it will be impossible to make an exhaustive exposition of the facts which will constitute a trade. The question in each case must be: Do the facts which are shown to exist in this particular case amount to the carrying on of a trade, and a carrying on of a trade in England? If the facts in the particular case do amount to that, it may be that there are hundreds of other facts wholly different and distinguished from the facts in the particular case which may constitute the carrying on a trade. There may be the carrying on a trade possibly although not one of the facts existed in that other case which exist in this. The sole question is whether the facts in this case do, upon a proper inference, lead to the conclusion that there was a trade carried on in England."

Cf. also per Jessel, M. R., in *Erichsen* v. *Last*, L. R. 8 Q. B. D. at p. 416: "There is not, I think, any principle of law which lays down what carrying on trade is. There are a multitude of things which together make up the carrying on of trade, but I know no one distinguishing incident, for it is a compound fact made up of a variety of things."

The converse of the preceding case—that even when there is an English agency, if no contracts are made here, there is no exercise of a trade—was decided in the important case of *Grainger & Son* v. *Gough*, (1896) A. C. 325; 3 Tax Cases, 462, which was carried to the House of Lords. A foreign wine merchant appointed an English firm as his

sole representatives. The English firm obtained orders and sent them to their principal, who exercised his discretion in executing them. The wine ordered was forwarded direct from Rheims to the purchasers at the expense of the latter. Payments were made for the most part to the French principal, and all receipts were sent direct from France to the English customers. It was held that the contracts were made and the deliveries took place abroad, and that no trade was exercised within the United Kingdom.

Per Lord Watson, at p. 471: "There may in my opinion be transactions by or on behalf of a foreign merchant in this country so intimately connected with his business abroad that without them it could not be successfully carried on, which are nevertheless insufficient to constitute an exercise of his trade here within the meaning of Schedule D. . . . Neither the British nor the foreign merchant can in my opinion be said to exercise his trade beyond the bounds of his own country, so long as all contracts for the sale of their goods and all deliveries to the purchaser are made within these limits."

In *Thomas Turner* (*Leicester*), *Ltd.* v. *Rickman* (1898), 4 Tax Cases, 25, the principle laid down above was stretched to its fullest limits.

An American company had an English agent, who, on receipt of an offer for the company's goods, communicated the offer to the company, and on receipt of their sanction accepted. The goods were shipped by the company free at Boston and consigned to the agent who distributed them to the customers. It was held that, as a matter of fact, the contracts were made in this country, and the goods delivered here so as to constitute a trade exercised in the United Kingdom.

Per Wills, J., p. 34: "The delivery was made in this country, and, in my judgment, even if the contract had been made in New York, an executory contract for sale, a man cannot get his money, and can make nothing of it unless he deliver the goods in this country. When he

does deliver the goods in this country he exercises a trade and carries on a business. It is just as essential a part as the acceptance of the order or anything else; it is a necessary element in his being able to get paid."

This *obiter dictum* of Wills, J., is a contradiction of the principle laid down in *Grainger* v. *Gough* and *Werle* v. *Colquhoun* (cited *supra*), and it is submitted, cannot be regarded as correct in the present stage of the decisions. If accepted, it would lead to strange anomalies, and would constitute, indeed, a stringent system of practical protection. If A. bought a motor-car from B. in Paris, making the contract there, and had the car consigned to him in England, delivery not being taken until the car had been tested and examined at home, and for the convenience of B. paid the purchase price into an English bank where B. had an account, B.'s profit on the transaction in the hands of the bank would, on this principle, be liable to taxation. Such a system would tax not only trade *in* England but trade *with* England, a policy which revenue authorities have always repudiated. (Cf. Introduction, pp. xxxv—xl.)

Cf. also *Sulley* v. *Att.-Gen.* (1860), 5 H. & N. 711; 29 L. J. Ex. 464; *Erichsen* v. *Last* (1881), 8 Q. B. D. 414; 1 Tax Cases, 351; *Tischler* v. *Apthorpe* (1885), 52 L. T. 814; 2 Tax Cases, 89; *Pommery & Greno* v. *Apthorpe* (1886), 56 L. J. Q. B. 155; 2 Tax Cases, 182; *Wingate* v. *Webber*, (1897) 34 Sc. L. R. 699; 3 Tax Cases, 569; *Watson* v. *Sandie & Hull*, (1898) 1 Q. B. 326; 3 Tax Cases, 611.

The law at present is as stated in the rule. At the same time the last case referred to deserves special notice, since it was an attempt on the part of the revenue authorities to get the law back to a more elastic basis. The Courts had come to select one fact in the conduct of business as the essential one instead of looking at the reality of the operation. They had, in fact, adopted a method foreign to the genius of our revenue law. (See Introduction, pp. xxvi—xxxiv.) The revenue authorities

therefore selected a case where the reality of the English business was undoubted, but where the question of the locality of contracts was a little confused, in the hope of getting a decision on broad principles. The Court, however, found as a fact the English locality of the contracts, and Wills, J., found another arbitrary clue to the locality of the business in the place of delivery. As has been argued elsewhere (pp. xxviii, xxix), it is very doubtful if a question of fact can ever be successfully treated by applying to it a small number of arbitrary categories, and it is to be hoped that an early decision of the Courts will restore the old elasticity of the law.

Mode of assessment and collection.

35. All profits under this rule are taxable in the first resort in the hands of the owner, if accessible, and in the hands of the branch, agent, factor or other person charged with their collection in the United Kingdom.

Act of 1842, sects. 41, 44, 51, 53. Sect. 41 lays down that "any person not resident in Great Britain, whether a subject of her Majesty or not, shall be chargeable in the name of such trustee, guardian, tutor, curator or committee, or of *any factor, agent or receiver, having the receipt of any profits or gains* arising as herein mentioned, and belonging to such person, in the like manner and to the like amount as would be charged if such person were resident in Great Britain and in the actual receipt thereof."

The machinery is simple in the case of an agent who receives all payments; but there may be the case of an agent who is a receiver for only part of the payments, or for none at all. It has been held by the House of Lords, in *Grainger* v. *Gough*, (1896) A. C. 325; 3 Tax Cases, 462, that the words "having the receipt of any profits or gains" applied to "factor" and "agent" as well as "receiver." Such a view would relieve from assessment an agent who made contracts but did not receive payment for his principal.

An agent who received part payments would be liable to taxation, and he could not escape liability by parting with the funds before assessment. "In the case of a trade exercised in this country, I think any agent who received for the foreigner exercising such trade moneys which included trade profit would be within the provisions of sect. 41." (Per Lord Halsbury, 3 Tax Cases, p. 468; cf. per Lord Davey, *contra*, at p. 475.) It is not necessary that the agent should receive profits, *i.e.*, gross income *minus* outgoings; it is sufficient if he receives a gross sum of any sort. (Per Fry, L. J., in *Werle* v. *Colquhoun* (1888), 2 Tax Cases, at p. 415.)

It would therefore appear that the rule does not apply in the case of an agent who exercises a trade but receives no payments. The machinery of sect. 41 of the Act of 1842 is not applicable to his case. At the same time, this fact does not exempt the foreign trader from liability to assessment if the revenue authorities are able to reach him in any other way, *e.g.*, by assessing the principal in person. (Cf. *Tischler* v. *Apthorpe* (1885), 2 Tax Cases, 89.) Per Esher, M. R., in *Werle* v. *Colquhoun*, cited *supra*, 2 Tax Cases, at p. 412: "If the Crown can find such an agent as is described in sect. 41 they can assess him; but supposing they cannot, that does not derogate from their right if there is a person assessable. Then what they do is by some means or other to get at that person .... We do not think, in order to make out whether they are assessable at all, you can limit Schedule D. by reason of sect. 41, and, if you cannot, sect. 41 is only machinery."

For deduction and abatements in the case of profits accruing to a foreign resident from British trade, see Rule XXI., *supra*, p. 51.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.

36. A foreign resident who visits the United Kingdom for a temporary purpose without any intention of establishing his residence there (a) shall not be considered a British resident for the purpose of the tax unless he shall have resided in the United Kingdom at one time or several times for a period equal in all to six months in the year in respect of which the tax is claimed. If, however, such foreign resident after claiming exemption leave the United Kingdom and return again on or before the fifth day of April following, he shall be liable as a British resident to the whole of the duties for the year in which such claim of exemption was made (b).

Act of 1842, sect. 39; Act of 1853, sects. 5, 6.

Temporary visitors to this country were exempted by sect. 8 of Pitt's Income Tax Act, 1799 (39 Geo. 3, c. 13), which provided that "no person who shall actually be in Great Britain for some temporary purpose only, and not with any view or intent of establishing his residence therein, shall be chargeable with the duties imposed by this Act as a person actually residing in Great Britain."

The Income Tax Act of 1803 (43 Geo. 3, c. 122), sect. 86, repeated this provision, and qualified the exemption by adding, "who shall not actually have resided in Great Britain for the period of six successive calendar months." The Act of 1806 (46 Geo. 3, c. 65), sects. 51, 52,

followed suit, and contained the further provision as to the departure of a foreign resident and his return within the year of charge. Sect. 39 of the Act of 1842 made the six months' period of residence cumulative.

(a) As to what constitutes intention of establishing residence, see *Att.-Gen.* v. *Coote* (1817), 4 Price, 183; *Cooper* v. *Cadwalader*, (1904) 12 Sc. L. T. R. 449; cf. also notes on pp. 32—34, *supra*.

(b) This provision is intended to prevent a foreign resident using his claim to exemption to wipe out his past residence, so as to reside untaxed more than six months in any one year. It is submitted that, if the residence after his return, together with the residence for which exemption has already been claimed, amounts in all to less than six months, he is still exempt under the first provisions of the rule. Such, it is understood, is the view of the revenue authorities.

37. All profits taxed under the rules contained in the two foregoing chapters shall, in respect of exemptions and abatements and methods of assessment, be treated as if they were profits accruing to residents in the United Kingdom.

For the deductions in the assessment of the profits under Rule XXVI., see Act of 1842, sects. 60 and 61, Schedule A. For profits under Rule XXVII., see Act of 1842, sects. 88—99, Schedule C. For profits under Rule XXVIII., which are assessed under Schedule D., see Chapters II. and III. For profits under Rule XXXII., see Chapter IV. It might be argued with reason that the provisions contained in sects. 163—170 of the Act of 1842, as to exemption and abatement from income under a fixed amount, would not apply to the case of a foreign resident who draws income from any source situated in the United Kingdom. Such relief should only apply when a man's whole income can be ascertained by

the revenue authorities, and in the case of a foreign resident this is *ex hypothesi* impossible.

But sect. 163 of the Act of 1842 has been construed otherwise. It is provided there that the claimant who can prove that "the aggregate amount of his income, *estimated according to the several rules and directions of this Act*, is less than . . ." is entitled to exemption. Obviously only the income which arises in this country fulfils the conditions of the words italicised, and therefore it alone must be considered in such a claim. There is nothing to prevent a millionaire in Frankfort, who happens to have his capital invested in Russia, and receives only 150*l.* per annum from English consols, from claiming the total exemption which is granted in England only to the really necessitous.

The amount of claims under this head, owing to the number of repayment agents in business, has now grown to a large figure, and it is probable that legislation will be asked for in the near future.

The committee recently appointed by the Treasury to investigate certain points in the income tax system have dealt with the matter in their report. (Parliamentary Paper, Cd. 2575, p. xxiii.) They point out that the number of claims for repayment from abroad has increased from 200 in 1877 to 20,000 in 1903, and that it is impossible, in most cases, to verify their accuracy. They add: "One of the main motives of equity in granting relief to persons in receipt of small incomes is that such persons contribute to the public revenue by means of indirect taxation in fair proportion to their taxable capacity. This ground for relief does not apply to residents abroad. We therefore recommend that the grant of exemption or abatement by reason of smallness of income should be abolished in the case of persons resident outside the United Kingdom. We believe that very few (if any) of the foreigners who invest in British securities have total incomes within the prescribed limits. If it be thought well to make an exception for British subjects residing abroad, relief should be granted only on a certificate from a British consular

officer (or, in a British colony, from the colonial fiscal authorities) that the claimant has produced proper evidence showing that his income from all sources is within the limits."

Specimens of the forms required for such claims are printed in the Appendix, pp. 104—107.

For Continental practice on the point, see Introduction, p. 1.

38. A foreign resident (a), the holder of a public office or employment of profit, not under the British Government, who performs the duties of such office wholly without the United Kingdom (b), is not liable to taxation on the emoluments of such office, even though they are transmitted to him from the United Kingdom.

Act of 1842, sects. 146, Schedule E., and 147; Act of 1853, sect. 2, Schedule E.

(a) "**Foreign resident.**"

Personal residence has in reality nothing to do with Schedule E., the only question being the locality of the office. The case of an English resident is considered under Rule XXV., *supra*.

(b) "**Wholly without the United Kingdom.**"

Rule III. of Schedule E. imposes the tax upon "all public offices and employments of profit of the description hereinafter mentioned *within the United Kingdom*." The words italicised are capable of two different interpretations. Either they may mean an office exercised wholly within Great Britain, or an office controlled from and dependent upon Great Britain, wherever its situation. The second interpretation harmonises the better with the accepted interpretation of similar words in other parts of the Revenue Acts, but it is made more than doubtful by the next section dealing with Schedule E. Sect. 147 runs: "Every

person to be assessed for his office or employment *shall be deemed to have exercised the same at the head office of the department under which such office or employment shall be held, and shall be rated for such office or employment as if exercised at such head office, although the duties of such office or employment shall be performed, or the profits or any part thereof arising from such office or employment shall be payable elsewhere, within or out of Great Britain;* and all assessments made on any inferior officer, wherever he shall exercise his office or employment, shall be rated accordingly in the same district where such head office shall be established; and any office shall be deemed to belong to and to be assessed by or under the principal officer of that department by or under whom the appointment to such office was made; provided that where such appointment shall be made by any inferior officer in any department, then such office shall be assessed by the same Commissioners by whom such inferior officer shall be chargeable for his office: provided that where any such appointment shall be held under the Great Seal or Privy Seal, either of England or Scotland, or shall be made under the Royal Sign Manual, or where any such appointment shall be under the hands or seals of the Treasury, and the same shall not be exercised in the department of the Treasury, then the officer holding the same shall be assessed in that department where the office shall have been executed."

The use of the word "department" and the whole tenor of the section show that it refers only to such foreign officials as may serve under the British Government. Such persons are to be "deemed" to exercise their office in the United Kingdom, the implication being that without such special provision they would not be so considered, and that other officials resident abroad do not hold an office which can be presumed to have an English situation. In these circumstances the words "within the United Kingdom," in Rule III. of Schedule E., must be given a strict interpretation, and confined to those offices whose exercise is wholly or substantially in Britain.

The secretary of an English company, or a Suez Canal director, who has to make occasional visits to Paris, will fall under the tax, but the agent of a British shipping company, resident at Singapore, will be exempt, although he is wholly controlled by the English head office, and has his salary remitted from England.

Such is the established practice, and the law, though not free from doubt, on the whole supports it. There is also a total lack of machinery with which to give effect to the alternative construction. This is not in itself a proof that the alternative is wrong, but it enables us to presume that such a construction was not the intention of the legislature. (See per Lord Herschell in *Colquhoun* v. *Brooks*, 2 Tax Cases, at p. 500.) The various sections in the Acts which empower an intermediary to pay the tax and recover it from the subject refer only to payments under Schedule C. or to the receipt of profits by an agent, trustee, or factor, neither of which covers the case of a salaried official. A company may, indeed, collect the tax from its employees, but it cannot be compelled to pay it to the Treasury, and the Revenue has no means of proceeding against the official himself. There is one exception, the case of railway companies. By 23 & 24 Vict. c. 14, s. 6, the special Commissioners are empowered to "assess the duties payable under Schedule E. in respect of all offices and employments of profit held in or under any railway company, and shall notify to the secretary or other officer of such company the particulars thereof, and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected, or levied accordingly; and it shall be lawful for the company, or such secretary, or other officer, to deduct and retain out of the fees, emoluments, or salary of each such officer or person the duty so charged in respect of his profits and gains." If, therefore, it were possible to tax, say, an official of the South Eastern Railway Company resident at Boulogne and exercising his office there, the tax could be levied

directly upon the company in London. But revenue law and practice are averse to taxing an official abroad (other than a government servant) who exercises his office wholly out of the United Kingdom.

39. A foreign resident, the holder of a public office or employment of profit under the British Government, (a) is liable to taxation (b) on the emoluments of such office or employment, as if it were exercised in the United Kingdom (c).

Act of 1842, sect. 147.

(a) "**Under the British Government.**"

These words must be interpreted strictly. An official to be chargeable must be in the direct employ of the Imperial Government and salaried directly from Imperial funds. An officer of a British regiment in India, for example, is, in a sense, in Imperial employment; but since he is, in fact, subject to the Viceroy or the Indian Commander-in-Chief, and is charged upon the Indian establishment, his pay is exempt from taxation. An Imperial official in South Africa attached to the High Commissioner as secretary and paid out of Imperial funds is taxed on his salary; but another secretary who is paid out of Transvaal funds is exempt, even though, as a matter of fact, these funds are loan funds advanced to the administration by the British Treasury.

(b) "**Liable to Taxation.**"

The assessment is made by special Commissioners appointed for the purpose, and the tax is deducted before payment. Act of 1842, Rule V. of Schedule E.; cf. also sects. 147 and 150, and notes on Rules XXV. and XXXVIII., *supra*.

(c) "**In the United Kingdom.**"

Act of 1842, sect. 146, Schedule E., Rule III.; sect. 147; Act of 1853, sect. 5.

APPENDIX I.

Foreign Dividends (including Colonial).

EXEMPTIONS IN FAVOUR OF FOREIGNERS, &c.

DECLARATION FORMS, &c. REQUIRED IN OBTAINING
Payment free of Tax.

REGULATIONS TO BE OBSERVED IN PAYING INTEREST FREE OF INCOME TAX ON FOREIGN AND COLONIAL BONDS, THE PROPERTY OF FOREIGNERS RESIDING ABROAD.

Income Tax is to be deducted on payment of the Interest in all cases where the following Regulations are not complied with:—

1. Foreign Owner of Bonds claiming exemption through a London Banker or Merchant on Bonds held abroad.	A Declaration of the Owner of the Bonds on Form A. is required to have been duly made before a British Consul or Vice-Consul (*or before a Notary Public where there is no British Consul or Vice-Consul*), and to be accompanied by the Declaration on Form B. of the London Banker or Merchant presenting the Coupons for payment.
2. Foreign Owner of Bonds claiming exemption through a Banker or Merchant residing abroad on bonds held abroad.	The same Forms to be used as in No. 1. In these cases (No. 2), however, the Declaration at the foot of Form A. is required to be signed by the Foreign Banker or Merchant through whom the Coupons are transmitted to London.
3. Banker or Merchant in London holding Bonds the property of Foreigners residing abroad.	A Declaration of the London Banker or Merchant holding the Bonds is required to have been made on Form C., either at the Office of the Special Commissioners of Income Tax, West Wing, Somerset House (*between* 12 *and* 2 *daily*), or at the Inland Revenue Office, Telegraph Street, E.C. (*between the hours of* 10 *and* 1 *on Tuesdays, Thursdays, and Saturdays*).

All Declarations should be presented direct to the paying Agents, who are requested to forward them *as soon as possible after payment of the Interest* to the Special Commissioners' Division, 2, West Wing, Somerset House, where they will be retained for examination.

The Board reserve to themselves the right of insisting on the production of the Bonds in any case in which it appears to them that the circumstances render that course necessary.

By order of the Board,

———, Secretary.

Inland Revenue Office, Somerset House.

Form A.

To be accompanied by the London Agent's Declaration on Form B. when Coupons are presented for payment.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE ABROAD BY AN OWNER OF FOREIGN BONDS CLAIMING EXEMPTION FROM INCOME TAX.

I (1), , of , by occupation , do hereby solemnly declare that the Coupons, amounting to £ , say (2) , as specified below, have been detached from Bonds which are my own absolute property, and which Bonds are in the possession of (3) , and that no British Subject, wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland, has any interest whatever in the said Bonds or Coupons.

Signature of the Owner of the Bonds ———.
Date ———.

Declared at , this day of , 190 ,
Before me,
——— Signature.
——— Designation.

Seal of British Consul or Vice-Consul (L.S.)
Seal of Notary Public (L.S.)

N.B.—This Declaration, when filled up, must only be made before a Notary Public in case there is no British Consul or Vice-Consul in the place where the Declarant resides. The Bonds, if required, must be produced in support of this claim.

(4) WHERE COUPONS ARE TRANSMITTED THROUGH A FOREIGN BANKER OR MERCHANT RESIDING ABROAD, ON BEHALF OF HIS FOREIGN CLIENTS, THE FOLLOWING DECLARATION MUST BE SIGNED :—

I declare that the above-named is one of my clients, and that the Coupons specified below have this day been transmitted by me for payment on his behalf to Messrs. , of .

Signature of Foreign Banker or Merchant ———.
Address ———.
Date ———.

(1) Name, address, and occupation of owner of the bonds to be plainly written.
(2) The amount of coupons to be set out in writing *before* the declaration is signed.
(3) Name and address to be fully given.
(4) If coupons are sent *direct* to an agent in the United Kingdom by the owner of the bonds, this declaration need not be signed.

SCHEDULE OF BONDS AND COUPONS.

Formule A.

Cette déclaration doit être accompagnée de celle de l'Agent à Londres faite sur la formule B. à la présentation des coupons à l'encaissement.

Income Tax.

DIVIDENDES ÉTRANGERS.

DÉCLARATION À FAIRE À L'ÉTRANGER PAR LE PROPRIÉTAIRE DE TITRES RÉCLAMANT L'EXEMPTION DE L'INCOME TAX.

Je soussigné (1), , demeurant à , de profession ou qualité , déclare que les coupons, dont le montant s'élève à £ , je dis (2) , suivant bordereau au-dessous, ont été détachés de Titres qui m'appartiennent en toute propriété, lesquels titres sont déposés chez (3) , et qu'aucun sujet britannique, en quelque lieu qu'il demeure, ou étranger résidant dans le Royaume Uni de la Grande Bretagne et de l'Irlande n'a aucun droit de propriété ou de jouissance quelconque dans les dits titres ou coupons.

Signature du propriétaire des Titres ———.
Date ———.

Déclaré à , le , 190 ,

Par devant moi,

——— Signature.
——— Qualité.

Sceau du Consul ou du Vice-Consul Britannique (L.S.)
Sceau du Notaire (L.S.)

Cette déclaration, après avoir été dûment remplie, ne devra être faite devant un notaire que dans les endroits où il n'y a pas de Consul ni de Vice-Consul Britannique. La production des titres à l'appui de cette déclaration pourra être exigée.

(4) DANS LE CAS OÙ LES COUPONS SERAIENT TRANSMIS PAR L'INTERMÉDIAIRE D'UN BANQUIER OU D'UN NÉGOCIANT ÉTRANGER RÉSIDANT À L'ÉTRANGER, POUR LE COMPTE DE SES CLIENTS ÉTRANGERS, IL Y AURA LIEU DE SIGNER LA DÉCLARATION SUIVANTE.

Je déclare que le sus-nommé est mon client et que j'ai remis aujourd'hui, pour son compte, les coupons spécifiés au-dessous pour l'encaissement à son profit à MM. , demeurant à .

Signature du Banquier ou négociant étranger ———.
Adresse ———.
Date ———.

(1) Les prénoms et nom, adresse et profession du propriétaire des titres doivent être écrits lisiblement.
(2) Le montant des coupons doit être inscrit en toutes lettres préalablement à la signature de la déclaration.
(3) Nom et adresse bien détaillés.
(4) Si les coupons sont remis *directement* à un agent dans le Royaume Uni par le propriétaire des titres, la déclaration ci-contre devient inutile.

BORDEREAU DES TITRES ET COUPONS.

Form A 2.

* { Coupon List, No. .
{ Dividends due .

* For use of Agent paying Coupons.

COLONISTS.

DECLARATION TO BE MADE BY A COLONIST, THE OWNER OF BONDS, WHO RESIDES IN THE COLONY TO WHICH THE LOAN RELATES.

I (1), , residing at , by occupation , do hereby solemnly declare that the Coupons amounting to £ , say (2) , as set forth below, have been detached from Bonds, which are my own absolute property, and that the said Coupons and Bonds do not belong, either directly or indirectly, to any person whatever residing in the United Kingdom of Great Britain and Ireland, and I, being resident in the Colony, to which the Loan relates, do therefore claim to have the said Coupons paid free of Income Tax.

Signature of the Owner of the Bonds ———.
Date ———.

Declared at , this day of , 190 .
Before me,*
——— Signature.
——— Designation.

Seal of Magistrate or Notary Public (L.S.)

N.B.—When presented by the London Agent, this Declaration should be accompanied by his Declaration on Form B.

(1) Name, address, and occupation of owner of bonds to be plainly written.
(2) The amount of coupons to be set out in writing.
* A magistrate or notary public.

SCHEDULE OF BONDS AND COUPONS.

Form B.

DECLARATION TO BE SIGNED BY A BANKER OR MERCHANT PRESENTING COUPONS IN LONDON ON BEHALF OF A FOREIGNER RESIDING ABROAD. (*To accompany Declaration on Form A.*)

declare that have received from the persons named below the Coupons specified in the annexed Declarations which have been made before a British Consul, Vice-Consul, or Notary Public, and on the ground of those Declarations claim to have the Coupons paid free of Income Tax, and hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of statement in the said Declarations as to Ownership of the Bonds and Coupons, the numbers of which are therein contained.

Signature of Banker or Merchant ———.
Address ———.
Date ———.

SPECIFICATION OF COUPONS.

From whom Coupons were received.	Name of Owner of the Bonds. *To be clearly written.*	Description of Bonds.	Aggregate amounts of Coupons of each description of Bond.
			£ s. d.
		Total..£	

Form C. * { Coupon List, No. . Dividends due .

* For use of Agent paying Dividend.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE BY A BANKER OR MERCHANT IN LONDON, HOLDING BONDS THE PROPERTY OF A FOREIGNER RESIDING ABROAD.

I, (1) of , do hereby solemnly declare that the Schedule below contains a true account of the Coupons, amounting to £ , say (2) , due on the days specified therein, and that such Coupons are derived from Bonds which are in my possession, and are claimed by me on behalf of (3) , of , to be paid free of Income Tax, and that the said Coupons and Bonds to which Bonds the said Coupons appertain, are the property of the said , and that no British subject wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland, has any interest whatever in the said Coupons or Bonds, or in any or either of them. Furthermore, I hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of Statement contained therein.

Signature ———.
Date ———.

Declared at , this day of , 190 , before me .

(1) Name and address of banker or merchant acting as agent of owner of bonds and coupons to be written in full.
(2) The amount of coupons to be set out in writing.
(3) Name, address, and occupation of owner of bonds and coupons to be written in full.

SCHEDULE OF BONDS AND COUPONS.

Form C.

* { Coupon List No. .
{ Dividends due .

* For use of Agent paying Dividend.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE BY A BANKER OR MERCHANT IN LONDON, HOLDING BONDS THE PROPERTY OF A FOREIGNER RESIDING ABROAD. [*Adapted for use on behalf of a British subject permanently resident abroad.* (*Schedule D. only.*)]

I, (1) , of , do hereby solemnly declare that the Schedule below contains a true account of the Coupons, amounting to £ , say (2) , due on the days specified therein, and that such Coupons are derived from Bonds which are in my possession, and are claimed by me on behalf of (3) , of , to be paid free of Income Tax, and that the said Coupons and Bonds to which Bonds the said Coupons appertain are the property of the said , and that *no British subject or Foreigner residing in the United Kingdom of Great Britain and Ireland* has any interest whatever in the said Coupons or Bonds, or in any or either of them. Furthermore, I hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of Statement contained therein.

Signature ———.
Date ———.

Declared at , this day of , 190 , before me, .

(1) Name and address of banker or merchant acting as agent of owner of bonds and coupons to be written in full.
(2) The amount of coupons to be set out in writing.
(3) Name, address, and occupation of owner of bonds and coupons to be written in full.

SCHEDULE OF BONDS AND COUPONS.

Form D.

* { Coupon List, No. .
Dividends due .

* For use of Agent paying Coupons.

To be accompanied by the London Agent's Declaration on Form B. when Coupons are presented for payment.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE ABROAD BY A FOREIGN BANKER IN RESPECT OF BONDS THE PROPERTY OF A FOREIGNER RESIDING ABROAD.

I (1), , of the Firm of , carrying on business at , do hereby solemnly declare that the Schedule below contains a true account of the Coupons, amounting to £ , say (2) , due on the days specified therein, and that such Coupons are derived from Bonds *which are either in my possession or are known by me to be in the possession of my clients*, whose names and addresses in full are given on the other side, and are claimed by me on their behalf to be paid free of Income Tax, and that the said Coupons and Bonds to which Bonds the said Coupons appertain, are the property of the said clients as particularized herein, and that no British Subject wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland, has any interest whatever in the said Coupons or Bonds, or in any or either of them.

Signature of Banker ———.
Date ———.

Declared at , this day of , 190 .
Before me,

——— Signature.
——— Designation.

Seal of British Consul, or Vice-Consul (L.S.)
*Seal of Notary Public (L.S.)

N.B.—* *This Declaration, when filled up, must only be made before a Notary Public in case there is no British Consul or Vice-Consul in or near the town wherein the Declarant resides or carries on his business. Any of the Bonds must, if required, be produced in support of this claim.*

(1) Name and address of banker acting as agent of owner of bonds and coupons to be written in full.
(2) The amount of coupons to be set out in writing.

SCHEDULE OF BONDS AND COUPONS.

Formule D. * { Liste des Coupons No. .
Dividendes échus .

* Pour l'usage de l'agent payant les Coupons.

On devra y joindre la Déclaration des Agents à Londres sur Formule B. au moment de la présentation des Coupons.

Income Tax.

DIVIDENDES ÉTRANGERS.

DÉCLARATION À FAIRE EN PAYS ÉTRANGER PAR UN BANQUIER ETRANGER RELATIVEMENT AUX TITRES QUI SONT LA PROPRIÉTÉ D'UN ETRANGER RÉSIDANT HORS DU ROYAUME-UNI DE LA GRANDE-BRETAGNE ET DE L'IRLANDE.

Je (1), , membre ou chef de la maison de , ayant son siège à , déclare solennellement par les présentes que le bordereau au-dessons contient le compte fidèle des coupons se montant à £ (2), savoir , échus aux époques y spécifiées, et que ces coupons proviennent de Titres *qui sont en ma possession ou que je sais être en la possession de mes clients* dont les noms et les adresses sont énoncés au-dessous, et dont je réclame pour leur compte le paiement exempt d'Income Tax et que les dits coupons et les titres auxquels les dits coupons sont afférents appartiennent aux dits clients, ainsi qu'il est indiqué aux présentes, et qu'aucun sujet britannique, quelle que soit sa résidence, et qu'aucun Etranger résidant dans le Royaume-Uni de la Grande-Bretagne et de l'Irlande n'a aucun droit de propriété ni de jouissance quelconque dans les dits coupons ou titres.

Signature du Banquier ———.
Date ———.

Déclaré à , ce jour de , 1 .
Devant moi,
——— Signature.
——— Désignation.
Sceau du Consul ou Vice-Consul Anglais (L.S.)
*Sceau du Notaire Public (L.S.)

N.B.—* *La présente déclaration, après que les blancs de la formule pourront être remplis, sera fait devant un Notaire Public, dans le cas seulement où il n'existe pas de Consul ou Vice-Consul Anglais dans ou près la ville où le déclarant réside ou a établi le siège de ses affaires. La production de tout ou partie des valeurs à titre de preuve à l'appui de la déclaration pourra toujours être exigée.*

(1) Les nom et adresse du banquier, agent du propriétaire des titres et des coupons devront être énoncés sans abréviation.
(2) Le montant des coupons doit être écrit en toutes lettres.

BORDEREAU DES TITRES ET COUPONS.

APPENDIX II.

Foreign Dividends (including Colonial).

EXEMPTIONS TO FOREIGNERS, &c.

FORMS USED IN CLAIMING **Repayment.**

Form A 1.

Income Tax.

FOREIGN DIVIDENDS.

AFFIDAVIT [*or* AFFIRMATION] TO BE MADE ABROAD BY THE OWNER OF THE BONDS CLAIMING REPAYMENT OF INCOME TAX.

I (1), , of , do hereby make Oath [*or* Affirmation] (2) and declare that the Coupons, amounting to £ , say (3) , as specified below, were detached from Bonds which, at the time the Interest on such Bonds was paid, were, together with the said coupons, my property, and did not belong either directly or indirectly to any British Subject wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland.

Signature of the Owner ———.
Date ———.

Sworn [*or* affirmed] at , this day of , 190 , before me,

——— Signature.
*——— Designation.

Seal of Consul, Vice-Consul, or Notary Public (L.S.)

Presented by ———, Agents in London.

(1) Name, address, and occupation of owner of the bonds to be plainly written.

(2) Affirmation permissible only to persons having no religious belief, or to whom the taking of an oath is contrary to their religious belief.

(3) The amount of coupons to be set out in writing.

* Here state whether consul, vice-consul, or notary public.

N.B.—Affidavits or affirmations to be made only before a notary public in places where there is no resident British consul or vice-consul.

SCHEDULE.

Form C—No. 1.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE BY A BANKER OR MERCHANT IN LONDON, HOLDING BONDS, THE PROPERTY OF A FOREIGNER RESIDING ABROAD, AND CLAIMING ON HIS BEHALF REPAYMENT OF INCOME TAX.

I (1), , of , do hereby solemnly declare that the Coupons amounting to £ , say (2) , as specified below, were detached from Bonds which, at the time Interest on such Bonds was paid, were, together with the said Coupons, the property of (3) , of , and were held by me on his behalf, and did not belong either directly or indirectly to any British Subject wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland. Furthermore, I hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of statement contained therein.

Signature ———.
Date ———.

Declared at , this day of , 190 ,
before me ———.

(1) Name and address of banker or merchant acting as agent of owner of bonds and coupons to be written in full.

(2) The amount of coupons to be set out in writing.

(3) Name, address, and occupation of owner of bonds and coupons to be written in full.

SCHEDULE.

———

Form C—No. 1.

Income Tax.

FOREIGN DIVIDENDS.

(Adapted for use on behalf of a British subject permanently resident abroad. Schedule D. only.)

DECLARATION TO BE MADE BY A BANKER OR MERCHANT IN LONDON, HOLDING BONDS, THE PROPERTY OF A FOREIGNER RESIDING ABROAD, AND CLAIMING ON HIS BEHALF REPAYMENT OF INCOME TAX.

I (1), , of , do hereby solemnly declare that the Coupons amounting to £ , say (2) , as specified below, were detached from Bonds which at the time Interest on such Bonds was paid were, together with the said Coupons, the property of (3) , of . and were held by me on his behalf, and did not belong either directly or indirectly to any British subject or Foreigner, residing in the United Kingdom of Great Britain and Ireland. Furthermore, I hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of statement contained therein.

Signature ———.
Date ———.

Declared at , this day of , 190 ,
before me ———.

(1) Name and address of banker or merchant acting as agent of owner of bonds and coupons to be written in full.

(2) The amount of coupons to be set out in writing.

(3) Name, address and occupation of owner of bonds and coupons to be written in full.

SCHEDULE.

Form C—No. 2.

Income Tax.

FOREIGN DIVIDENDS.

DECLARATION TO BE MADE BY A BANKER OR MERCHANT IN LONDON, HOLDING A POWER OF ATTORNEY TO RECEIVE DIVIDENDS OF STOCK, THE PROPERTY OF A FOREIGNER RESIDING ABROAD, AND CLAIMING ON HIS BEHALF REPAYMENT OF INCOME TAX.

I (1), , of , do hereby solemnly declare that the Dividends amounting to £ , say (2) , as specified below, relate to Stock, which at the time such Dividends were paid, was the property of, and inscribed in the Name of (3) , and did not belong either directly or indirectly to any British subject wherever residing, or Foreigner residing in the United Kingdom of Great Britain and Ireland. Furthermore, I hereby undertake to refund to the Board of Inland Revenue any Income Tax which may be allowed under this Declaration through any inaccuracy of statement contained therein.

Signature ———.
Date ———.

Declared at , this day of , 190 ,
before me ———.

(1) Name and address of banker or merchant acting as agent of owner of stock to be written in full.

(2) The amount of dividends to be set out in writing.

(3) Name, address and occupation of owner of stock and dividends to be written in full.

SCHEDULE.

Form A 3.

FORM OF AFFIDAVIT TO BE MADE BY THE COLONIST.

I(1), , as described beneath, do hereby make Oath and Certify that the Coupons amounting to £ , say(2) , as detailed herein, are derived from Bonds, which Bonds are *in my possession*(3) and do not belong either directly or indirectly in any way whatever, to any person residing in the United Kingdom of Great Britain and Ireland, and I being a resident in the same Colony in which the Loan was raised, do therefore claim repayment of the Income Tax deducted upon payment of the Interest.

The Signature of the Owner ———.

Address sufficient to find the Owner by Post ———.

Date ———.

Sworn at , this day of , 187 , before me* .

Number of Coupons.	Description of Coupons.	Amounts.
		£ s. d.

[*At Back.*]

INCOME TAX.

STATEMENT of a Person acting as Agent to Colonists residing in the same Colony in which any Loan may have been raised, and claiming, on their behalf, a Return of the Duty Assessed on Dividends which are paid out of the Public Revenue of such Colony.

Name of Colonist on whose behalf claim is made.	Residence,—*in full.*	Description of Stock, &c. If Coupons, state the Numbers.	Amount of Dividends or Interest.	Date when Dividends became due or payable.	Amount of Tax Deducted.
				£	£ s. d.

, the undersigned , acting as Agent to do hereby declare that have received the Coupons above described from Correspondent, and in consequence of Affidavit above, claim the repayment of the Income Tax, amounting to £ .

Name of Claimant ———.

Residence that will be found by the Post ———.

Date ———.

For the form of Affidavit to be made by the Colonist, see above.

(1) Name and address of owner of bonds to be plainly written.
(2) The amount of coupons to be set out in writing.
(3) If not in owner's possession, insert the words "are my own property."
* A notary public or magistrate.

Income Tax.

CLAIM OF EXEMPTION. RESIDENCE ABROAD.

NOTICE TO BE GIVEN BY A PERSON CLAIMING REPAYMENT OF INCOME TAX, THE CLAIMANT BEING A PERMANENT RESIDENT OUT OF THE UNITED KINGDOM.

In pursuance of the Acts of Parliament for granting to His Majesty duties on Profits arising from Property, Professions, Trades, and Offices, I hereby declare that I have resided out of the United Kingdom of Great Britain and Ireland from * to the present time; further, that my absence from the United Kingdom has not been for the purpose of occasional residence only, but that I have established a residence out of the United Kingdom, and do not possess or retain any residence therein. I therefore give notice that I am entitled to and do hereby claim repayment of the Income Tax charged in respect of the sources of Income specified at the back hereof.

Signature of Claimant ———.
Residence ———.
Date ———, 190 .

Declared and subscribed before me this day of , 190 .
Signature ———.
†Designation ———. (L.S.)
Address ———.

When complete, this form should be forwarded to the Secretary, Inland Revenue, Somerset House, London, W.C., together with the relative vouchers setting forth the Income Tax deducted. The vouchers must be signed by the person who has deducted the Tax, and accounted for the same to the Revenue.

* Here state when claimant commenced to reside abroad.

† To be witnessed by a magistrate, British chaplain, British Consul, Vice-Consul, or notary public, with seal.

APPENDIX III.

Income Tax Repayment Claims by Persons resident Abroad.

BRITISH INCOME WITHIN THE EXEMPTION OR ABATEMENT LIMIT.

Form 43.

Income Tax.

EXEMPTION CLAIM BY A PERSON OUT OF THE UNITED KINGDOM

190 —190 . INCOME NOT EXCEEDING £160.

A Trustee can claim only for Minors, a Person incapacitated, or a Married Woman permanently separated from her Husband.

I make oath [*or* affirmation] and say that the following is a true account of *my*(1) (*the*) Income from **every source** in the **United Kingdom** for the year ending 5th April, 190 , *of*(2) , *who*(3) , *and for whom I am*(4) , *under*(5) , and I therefore claim the sum of £ , to be repaid at the Money Order Office at(6) , to my Agent(7), , of .

I further declare that *I am*(1) (*he is*)(8) , and *have*(1) (*has*) resided out of the United Kingdom since , 1 , and *have*(1) (*has*) established *my*(1) (*his*) residence permanently out of the United Kingdom.

Claimant's Signature at full length ———.*
Claimant's Exact Address ———.
Date ———, 190—.

(1) Cancel words in italics not applicable.
(2) If a trustee claims, here state name or names of person or persons for whom claim is made.
(3) State whether minor, person incapacitated, or married woman permanently separated from her husband.
(4) State whether trustee, agent, &c.
(5) Describe deed or will under which trust created, or otherwise.
(6) State FULL address of office.
(7) Agent must reside in United Kingdom.
(8) Here state whether British subject or not a British subject.

* A lady must state, after signature, whether widow or spinster.

PARTICULARS of the **Total Income from the United Kingdom** of the Person on whose behalf the Claim is made, from **every Source, whether Taxed or not,** for the Year from 6th April, 190 , to 5th April, 190 .

No. 1.—Income derived from Dividends on Stock inscribed in the Books of the Bank of England or from English Government Annuities. (For these no Certificate of Deduction is required.)

Name or Description of Stock or Annuity, and whether the Dividends are paid by post or through Bankers.	Name or Names (in due order) in which the Stock or Annuity stands.*	Amount thereof, and if part of larger Sum state also larger Sum.	Month and Year when Dividend or Annuity due from which deduction made.	Annual Amount of Income from each source.	Amount of Tax paid on, or deducted from each source of Income.
		£ s. d.		£ s. d.	£ s. d.

No. 2.—Income **not derived** from any of the sources referred to in No. 1. (Collectors' Receipts or Certificates required as per instructions on the back hereof, except for English and Indian Government Pay and Pension.)

Total Amount of Income from all sources from the **United Kingdom**, and Tax thereon ..... £

No. 3.—Particulars of **Deductions from Income**, such as **Ground Rent, Mortgage Interest**, &c. If there be none, say "None."	Annual Amount.
	£ s. d.

Total Deductions and Tax thereon ..... £

Total Amount of Income from all sources from the **United Kingdom** after Deductions, and of Tax paid ..... £

Sworn [*or* affirmed] at , this day of , 190 , before me,† Signed ——— } Signature of Claimant at full length ———.‡

* If in Chancery, the correct title of the suit (which appears at the head of each draft issued by the Chancery Pay Office) should be given instead. Claimants should take a note of the title of the cause when each draft is received.

† A justice of the peace, British consul, or notary public.

‡ A lady must state, after signature, whether widow or spinster.

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